United States Court of Appeals for the Second Circuit



APPENDIX

74-2548

Docket No. 74-2548

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

B P/S

JOHN R. PATTERSON, et al.,

Plaintiffs-Appellees,

- against -

NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY, et al.,

Defendants'Appellees,

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiffs-Appellees,

- against -

NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY, et al.,

Defendants-Appellees,

DOMINIC VENTRE, FRANK CHILLEMI, GERALD KATZ, et al.,

Intervenors,

JAMES V. LARKIN,

Intervenor-Appellant

OF Applied and Applied Extent.



HERMAN H. TARNOW Attorney for Appellant 663 Fifth Avenue New York, New York 10022



PAGINATION AS IN ORIGINAL COPY

MEMORANDUM OPENION AND ORDER

This memorandum approves a settlement reached by all of the parties after a four-week trial on the merits of two consolidated actions charging employment discrimination in the newspaper and publications delivery industry in the New York City area. The provisions of the agreement are intended to achieve a 25% minority employment goal in the industry within five years. At the present time, minority employment in the industry is less than 2%; the comparable percentage of minorities in the relevant labor force in the New York City area is approximately 30%. The agreement also provides for supervision of hiring practices and employment opportunities in the industry to the benefit of both minority and non-minority workers.

One of the actions has been brought by the Equal Employment Opportunity Commission (EEOC) and names as defendants the Newspaper and Mail Deliverers Union of New York and Vicinity (the Union), the New York Times (Times), the New York Daily News (News), the New York Post (Post) and some fifty other publishers and news distributors within the Union's jurisdiction. The other action is a private class action on behalf of minority persons. Both actions charge that the Union, with the acquiescence of the publishers and distributors,

the present structure of the collective bargaining agreement, combined with nepotism and cronyism and other abuses i employment and referral practices, have perpetuated the effects of the past discrimination, in violation of 42 U.S.C. §§2000e et seq. (Title VII). Each lawsuit sought an affirmative action program designed to achieve for minorities the status they would have had in this industry but for the alleged discriminatory practices.

Both actions were filed in 1973. After months of negotiation, the parties reached a settlement agreement in early 1974, but it was rejected by vote of the Union's membership. Following another abortive attempt to obtain ratification from the membership, the two actions were consolidated with each other for a hearing on motions for preliminary relief before this Court. The hearing commenced May 14 and At its conclusion on June 12, 1974, the Court ordered the hearing consolidated with trial on the merits, pursuant to Fed.R.Civ.P. 65(a)(2), giving the parties the opportunity to present further evidentiary submissions or testimony. No further evidence was presented. Instead, the parties having once again extered into settlement discussions, brought before this Court for approval a Settlement Agreement dated June 27,

1974, entered into by all the plaintiffs and all the defendants, and ratified by the Union membership.

A hearing on the fairness, adequacy and reasonableness of the Settlement with respect to the plaintiffs' class was held on August 27, 1974, after due notice to that class. On the same date the Court also held a separate hearing on the legality of the relief provided in the Settlement and its impact on a group of non-minority workers who had, prior to trial, been permitted to intervene in the consolidated actions for the purpose of challenging any affirmative relief which might have affected their interests.

The Standards

As a general proposition, when a settlement agreement is presented to the Court for approval, the Court's role is limited to the exercise of its equitable powers.

The Court is not to substitute its judgment for that of the parties. See, e.g., Glicken v. Bradford, 35 F.R.D. 144, 151 (S.D.N.Y. 1964); United States v. Carter Products, Inc., 211 F.Supp. 144, 148 (S.D.N.Y. 1962). Instead, its role is to assure that the settlement is fair to the class and the parties, and represents a reasonable resolution of the dispute. See, e.g., State of West Virginia v. Chas. Pfizer & Co., 314 F.Supp. 710 (S.D.N.Y. 1970), aff'd, 440 F.2d 1079 (2d Cir.), cert.

denied, 404 U.S. 871 (1971). Ordinarily, the Court is not expected to examine conclusively into the underlying facts or legal merits of the action. See, e.g., Newman v. Stein, 464 F.2d 689, 691-93 (2d Cir.), cert. denied, 409 U.S. 1039 (1972); United States v. Carter Products, Inc., supra, 211 F. Supp. at 148.

But, this is not an ordinary case. It must be recognized that efforts to correct discrimination affect the strongest public sensitivities. The interests involved are far broader than those of the particular parties in a particular lawsuit. Therefore, the parties cannot be permitted to settle for less than, or for more than, the facts of the case and public policy expressed in Title VII mandates. Thus, although the Court is of the opinion that even at this late stage public policy is served by an agreement rather than an adjudication, a more searching discussion of the merits is warranted. In fact, the state of the law in this Circuit may require certain findings of fact to support affirmative action in a Title VII case even when it is resolved by settlement. See, Rios v. Enterprise Association Steamfitters Local 638, #73-2110, Slip Op. at 4379 n.4 (2d Cir., June 24, 1974), explaining United States v. Wood, Wire and Metal Lathers International Union, 471 F.2d 408 (2d Cir. 1973), cert. denied, 412 U.S. 939 (1973). Further, a more conclusive examination of the merits is necessary in this case because the affirmative action program and the minority goal in principle, and the 25% minority goal, are all vigorously disputed by the intervenors.

Inasmuch as this Court has heard a four-week completed trial in these actions, it is in a unique position to find facts and to set forth conclusions of law. Therefore, what follows shall constitute this Court's findings and conclusions to the extent that they form the necessary legal support for the affirmative action proposed.

The Background

Most of the facts are not contested. The Union is the exclusive bargaining agent for a collective bargaining unit encompassing the work performed in the delivery departments of newspaper and publication distributors in the New York area. Its geographic jurisdiction has been variously stated, but it is fair to define it by where the employers in the industry are located: in the metropolitan area of New York City (within a fifty mile radius of Columbus Circle), the New York counties of Nassau and Suffolk, the New Jersey counties of Bergen, Essex, Hudson, Middlesex, Monmouth, Passaic and Union, and the Connecticut county of Fairfield.

The nature of the delivery industry is such that the employers' needs for delivery department employees vary from day to day, and indeed, shift to shift, depending upon the size and quantity of the publication(s) being distributed. Thus, each employer by the terms of the Union contract, maintains a regular work force (Regular Situation holders) for its minimum needs, and depends upon daily shapers

to supplement the force. By the terms of the contract, at the major employers the shapers are categorized into groups with descending daily hiring priorities. The Group I list of shapers is restricted, by contract, to persons who have at one time held a Regular Situation in the industry. They have first shaping priority at every shift, in order of their shop seniority. After the Group I is exhausted at any given s'ift, the contract provides that the next hiring priority shall so to Group II members. Group II consists of all persons in Group I and all persons holding Regular Situations in the industry. Once all of the Group II members who have appeared for the shape are put to work, the contract provides that the remaining open jobs, if any, will go to Group III members who have appeared for the shape, in order of their shop tenure.

The shaping system is considerably less structured for the smaller publications and distributors, and, in fact

at this time, only the Ne s and the Times maintain Group
III lists of any significant size.

Union's jurisdiction, whether performed by Regular Situation holders or by any of the members of the various groups, or any one who shapes at all. The jobs are essentially the same, regardless of the status of the worker who fills them, and are all relatively unskilled. Most workers drive tracks or do floor work. However, because the contract provides that a Regular Situation is a prerequisite to Union membership, only Regular Situation holders and members of Groups I and II are Union members.

In theory at least, in addition to structuring the daily hiring priorities, the Group system also represents the priority list for filling Regular Situations as they may become vacant in the newspapers shops.

The Union was founded in 1901, long before the present Group structured contract was in existence. There is no evidence to indicate that at that time it had any minority members (as that term is defined today). Historically it virtually limited membership to the first born legitimate son of a member. The industry had a closed shop and Union members were consistently hired before non-Union mem

at all industry shapes. In 1952, the industry adopted the contract which included the rudiments of the Group structure described above.

of the Union prior to 1952 resulted in discrimination against minorities. See, e.g., Rios v. Enterprise Association Steamfitters Local 638, supra, at 4377-78; United States v. Wood, Wire and Metal Lathers International Union, 328 F.Supp.429, 432 (S.D.N.Y. 1971). The fact that the Union's intent was not to discriminate against minorities, but to prefer Union members and their sons, does not change the basic conclusion. The effect of such policies, deliberate or not, was to foreclose minorities from employment in the industry. It is the discriminatory effect of practices and policies, not the underlying intent, which is relevant in a Title VII action.

The Group structure, in tituted in 1952, appears on its ace to discard these discriminatory policies and to open up regular employment opportunities and Union membership to the entire labor force. But, there is uncontroverted evidence that certain relevant provisions of the contract have been administered haphazardly, and that the Group structure has been circumvented by friends and family of Union members. In practice, the fact is that no non-Union Group III shaper in

the industry has achieved a Regular Situation, and thus
Union membership, by moving up the Group system since 1963.

asserted that the Union was not motivated by any intent to discriminate against minorities, but went on to say that, "I would be the first to admit that we favor and we are partial to our members and I'm not ashamed of that." This attitude is, of course, admirable under most circumstances. There would be nothing unlawful about its effect under Title VII providing that minorities, historically, had been provided free and equal access to Union membership. But the facts indicate that such is not the case here. And even without evidence of abuse of the Group system, the statistics alone reveal the present situation.

There are presently some 4,200 members of the Union, including some 900 pensioners. More than 99% of these Union members are White (non-minority).

There are, at present, a total of 2,855 persons actively working in the industry--this includes Regular Situation holders (2,460), Group I members (123), and Group III members (272). Of the total in these categories, 70 persons--2%--are Black, Spanish-surnamed, Oriental or American Indian. Of the 70 minority persons, 28 are scattered

73-2558

among the smaller publishers and distributors; 24 work at the News where the force is approximately 900; 17 work at the Times where the force is approximately 400; and 1 works at the Post where the force is approximately 318.

These figures demonstrate that 20 years after the industry instituted a neutral Group structure of employment and hiring priorities, the participation of minorities in this industry is still grossly disportionate to the percentage of minority workers in the relevant labor force, which the EEOC suggests is approximately 30%. Even allowing for the fact that the industry has seen many newspapers disappear in these last two decades, with a concomitant loss of jobs, the clear inference from these statistics is that abuses of the Group structure and indeed the Group structure itself, is serving--however unintentionally--to "lock-in" minorities at the non-Union entry level of the industry, and to thereby perpetuate the impact of past discrimination on the minorities with whom these Title VII actions are concerned. It is this present impact of past practices which justifies the affirmative, corrective relief embodied in the Settlement Agreement. Griggs v. Duke Power Co., 401 U.S. 424 (1971); Rios v. Enterprise Association Steamfitters Local 638, supra; United States v. Wood, Wire and Lathers International Union, supra; United

States v. Bethlehem Steel Corp., 446 F.2d 652 (2d Cir. 1971).

The Terms of the Agreement

As with many resolutions of employment discrimination cases, the Settlement Agreement in these actions contains general provisions permanently enjoining the defendants from discriminatory practices in violation of Title VII. And, like the judgment in Rios (71 Civ. 847, S.D.N.Y., June 24, 1973) and the agreement in Wood, Wire (68 Civ. 2116, S.D.N.Y., Feb. 25, 1970), this Settlement Agreement sets forth a minority employment goal. In this case, it is for 25% minority employment in the industry within five years. 4/ But, unlike Rios and Wood, Wire, this Settlement Agreement does not merely commit the parties to the future development of a plan to achieve that goal. Instead, it sets forth a plan with great specificity, including variations on the general theme to account for varying circumstances between different employers. Such detail indicates that the plan is the result of hard, serious and good faith negotiations, and that the different pressures, perspectives and interests of the parties have been confronted and already resolved. This serves to increase the Court's confidence that the plan is workable, and can be implemented immediately.

The plan is built upon the outline of the present Group priority structure of the collective bargaining agreement. It provides for an administrator whose duties include not only close supervision of the plan, but also of employment opportunities in the industry on behalf of all workers. major features include elimination of past abuses of the Group system; elimination of the contract provision which restricted Group I to former Regular Situation holders; provision for an orderly flow of Group III shapers -- alternating one minority person with one non-minority person--into steady and secure employment in the industry, first as members of Group I and from there, as Regular Situations become vacant, to Regular Situations. Union membership will be offered to each Group III worker as he reaches the bottom of Group I. The plan further provides that until the 25% minority employment goal is achieved, employers shall hire, at the entry level, three minority persons for every two non-minority persons. In addition, minorities who are presently active on Group III at the News and the Times will immediately move to the bottom of the Group I list, with an equal number of non-minorities to immediately follow them onto the Group I list. These minorities will be given pension benefits they would have earned but for the disadvantages they have encountered. With

the same purpose, funds have been established by the defendants to provide back pay awards chiefly to these persons.

The Intervenors' Objections

The Group III list at the News numbers 178. Scattered throughout the list, in terms of tenure, are 13 minority persons. The intervenors purport to speak for the other 165 persons on the list, and more broadly for all non-minority, non-Union workers in the industry.

Most of the provisions of the Settlement Agreement are applauded by the intervenors, as well they might be. By regulating employment opportunities in the industry, unlocking Group III and Group I, Regular Situations and Union membership, the Agreement will operate beneficially for the intervenors as well as for the minorities.

The focus of their objection is on the order of the flow from Group III to Group I. They assert that the flow ought to be in strict order of tenure on Group III. To immediately move all of the present Group III minorities to the Group I list ahead of some non-minorities who have been listed for a longer period of time on Group III, they assert, is to engage in "leap-frogging" not intended by Title VII. Further, they argue, that the system becomes even more onerous when the provisions for alternating minority/non-minority

elevation to Group I go into effect, because after the few minorities who have any tenure in the shop are moved to Group I, the employer will be required to move minorities with no tenure at all ahead of some present Group III non-minorities.

of their objections are so. And, at first glance their frustration and anger with this Settlement Agreement is understandable, and their solution is appealing. These intervenors from Group III, as individuals, have also suffered the effects of the Union's nepotism; they have also attacked the present practices and abuses in other forums, under different statutes. Certainly this Court does not accept the argument that these particular men have benefited from a discriminatory system.

But, on deeper examination of the Settlement Agreement and the intervenors' objections, there are a number of reasons why this Court does not, and indeed can not, view the intervenors as raising countervailing considerations of such a substantial nature as to preclude approval of the plan.

by the intervenors, the Settlement Agreement simply does not trample on their employment opportunities. In the long run, it must be acknowledged by all concerned that the effect of this Agreement, if it operates as predicted, will be to

achieve Regular Situation of Group I status for all members of Group III, minority and non-minority alike, within a relatively short time-span. Without this Settlement, Group III workers had little if any hope of ever achieving either status under the present system. The intervenors do not contend otherwise. Instead, their objections deal in the main with interim measures which do, in fact, move some minorities faster than some non-minorities. But it must be noted that once a Group III non-minority is elevated to Group I, his daily shaping opportunities will be no less than they presently are and indeed they may be greater. The News projections submitted to this Court indicate that within a month after implementation of the plan, the nonminority who is number 47 on the Group III list, and all non-minorities above him, will have been elevated to Group I. The progression thereafter is expected to be approximately 27 non-minority persons to Group I each year. Also the Settlement Agreement provides other benefits to Group III non-minorities, not the least of which is the appointment of an administrator who is empowered to assure that existing work opportunities in the industry shall be made available to any Croup III person unable to get at least 45 shifts of work in any calendar quarter.

Further, even if the Settlement Agreement did not provide non-minorities with these benefits, the intervenors' position is not factually or legally sound. Their premise is that the Settlement Agreement will oust them from what they perceive as vested seniority rights in their Group III order. If, in fact, this Settlement Agreement affected firm and realistic seniority rights and expectations of innocent nonminority workers, there could be doubts as to the validity of the relief afforded. See, e.g., United States v. Bethlehem Steel Corp., supra, /at 661. But, in this case, regardless of the priority structure of the present contract, and the language which may be used in it, the fact remains that Group III workers do not have full-time employment, nor do many of them have any great expectations or intention of working full-time while they shape from the Group III list. They are shapers. And, to the extent that the present contract structure, in theory, gives them certain priorities, by tenure on Group III, to achieve Regular Situations, the facts have demonstrated that they could not have any realistic expectation of such movement actually occurring. As noted above, no Group III worker has moved up the list to a Regular Situation since 1963.

Their expectations with respect to daily shape priorities must be viewed in a somewhat different light. When an additional person is placed in front of a shaper, theoretically his chances of working any particular shift are decreased by a factor of one job. This, of course, depends on the stability of the total number of jobs available from shift to shift and whether or not the new person chooses to shape the same shift. In other words, assessing a shaper's expectation is a highly speculative exercise. The Court does not mean to minimize a Group III member's vested emotional interest in his position at a shape, but it cannot be equated with the worker who might be "bumped" from a steady and seemingly secure position by an outside minority with less seniority than him. Further, it must be pointed out that even if these shaping priorities were viewed as providing firm expectations, "[such] seniority advantages are not indefeasibly vested rights but mere expectations derived from a bargaining agreement subject to modification." United States v. Bethlehem Steel Corp., supra, 446 F.2d at 663. Indeed, the intervenors themselves recognize this principle when they approve of many changes made in the collective bargaining agreement by the proposed Settlement.

Also, it must be said that the relief the intervenors suggest, which would observe strict tenure of the Group III list, would most likely not provide the relief mandated by Title VII for minorities. Given the fact that the active work force at the News numbers 900 and includes only 24 minority persons, it would clearly take a far longer period of time to reach a goal of 25% minority employment. Because the minority percentage is so low, the same objection holds true if, as the intervenors have suggested, the Group I and Group III lists were dovetailed by shop tenure.

Finally, it must not be forgotten that this is a Title VII case. Such cases, as Judge Frankel has said in Wood, Wire are "launched by statutory commands, rooted in deep constitutional purposes, to attack the scourge of racial discrimination in employment. . . [a]nd we know that, in addition to the spiritual wounds it inflicts, such discrimination has caused manifold economic injuries, including drastically higher rates of unemployment and privation among racial minority groups." United States v. Wood, Wire and Metal Lathers International Union, Local Union 46, 341

F.Supp. 694, 699 (S.D.N.Y. 1972). Title VII is an expression of a commitment to correct minority employment discrimination and, hopefully, the vast social consequences that flow from

not undertake to correct all forms of employment discrimination. Thus, to the extent that what the intervenors seek here is relief equal to that afforded minorities, it has no legal foundation, in this case. Under the law, relief here must be limited to victims of the kind of discrimination prohibited by Title VII. United States v. Bethlehem Steel Corp., supra, 446 F.2d at 665. There is no evidence and no assertion that the intervenors have been discriminated against on account of race, religion, color, sex, national origin, or because they have made charges, testified, assisted or participated in any enforcement proceedings under Title VII.

The 25% Minority Employment Goal

Association Steamfitters Local 638, supra, at 4387, for reliable factual support for the 25% goal. All of the parties have agreed to the figure. The EEOC has based its conclusion on relevant labor force statistics contained in the tables published by the United States Department of Commerce in a publication entitled General Social and Economic Characteristics, 1970 Census of Population, for the relevant geographic areas of the Union's jurisdiction. Using what this Court agrees is the most reliable profile possible of

the candidate for deliverers' work, the EEOC has extracted figures for Black males over 16 years of age with a high school diploma or less. With considerably ingenuity, the agency has also extrapolated comparable figures for minorities other than Black. Added together they indicate that the relevant labor force is 30% minority. Although the private plaintiffs and the intervenors have submitted other calculations and bases with respect to minority representation in the relevant labor force, in this Court's view the EEOC analysis is the soundest and provides ample support for the 25% minority goal included in the Settlement Agreement.

Conclusion

This Court has found that the affirmative relief provided in the Settlement Agreement is justified by the facts of this case. It has found that the 25% minority goal is supported by reliable statistics. It has found that the affirmative relief provides members of the plaintiffs' class and other minorities with an adequate, fair and reasonable route to their "rightful place" in this industry, and that the Settlement Agreement is enforceable, legal and in the public interest. The Court has also found that the Settlement Agreement does not so interfere with the rights of the intervenors as to require disapproval.

Therefore, the socion of the parties for approval of the Settlement Agreement is hereby granted. Settle Order, upon the consent of the parties, endorsed thereon by their attorneys, accordingly.

SO ORDERED.

Dated: New York, New York September 19, 1974

15/LAWRENCE W. PIERCE

LAWRENCE W. PIERCE U. S. D. J.

FOOTNOTES

- 1. "Minority" as it is used in this Settlement
 Agreement refers to the definition of that word
 by the Equal Employment Opportunities Commission,
 and means people who are Black, Spanish-surnamed,
 Criental and American
- 2. Group II is not counted because Group II is constituted of persons the also held Regular Situations or Group I positions in the industry. They are permitted by the contract to shape in any shop other than their own, in addition to their regular jobs.
- 3. See pp. 23-24.
- 4. The parties have defined "employment" as encompassing Regular Situations and Group I positions. Their view is that a place in either of these two groups represents a steady, secure job in the industry. The Court agrees, at this time. The definition is subject to revision by terms of the Settlement Agreement.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JOHN R. PATTERSON, et al.,

Plaintiffs,

73 Civ. 3058 (LWP)

MIG 16 1974

NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY, et al.,

Defendants.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

- v -

Plaintiff.

73 Civ. 4278 (LWP)

NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY, et al.,

Defendants.

DOMINICK VENTRE, FRANK CHILLEMI, : GERALD KATZ, et al.,

Intervenors.

JAMES V. LARKIN, individually and on behalf of all of the persons similarly situated,

Intervenors. :

GOVERNMENT'S PROPOSED FINDINGS OF FACT

- 1. This is an action filed pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.
- 2. The defendant Newspaper and Mail Deliverers' Union of New York and vicinity ("NMDU" or "Union") is the recognized bargaining agent for the collective bargaining

11/ A-23

MD:mel 73-2558 D-59 unit consisting of work performed in the delivery departments of the remaining defendants in this action ("the employers"), who are newspaper, and newspaper and magazine delivery companies in the New York metropolitan area. (Plaintiffs' Exh. (hereinafter "PX") 2a, 2b, 2c, 2d, 2e)

- 3. The Union and the employers are engaged in an industry affecting commerce.
- 4. The employers contract with the Union to perform delivery services. The services themselves are performed by members of the Union and by non-members of the Union, but the Union represents all such individuals as members of the collective bargaining unit. (PX 2a-2e; Testimony of Bogart, Harrington, and Levy).
 - 5. There are two types of employers:
 - Publishers, who engage in the production and distribution of printed material; and
 - b. Wholesalers (hereinafter "News Companies"),
 who engage in the distribution of printed
 material. (Testimony of Bogart, Harrington
 and Levy).
 - 6. The geographic jurisdiction of the Union includes:
 - a. The Metropolitan Area of New York, defined here as the corporate limits of the City of New York and all territory embraced within a radius of approximately fifty miles from Columbus Circle.
 - b. The counties of Nassau and Suffolk in Long Island, New York.
 - c. Fairfield County in Connecticut.
 - d. The seven New Jersey counties of Bergen, Essex, Hudson, Middlesex, Monmouth, Passaic, and Union.

(PX 2a-2e).

A-24

- 7. Delivery work is performed by separate shifts of work. Some of the work done by deliverers is driving work, and some is floor work, that is, non-driving work. For both types of work the employers employ steady employees known as regular situation holders. (PX 2a-2e; Tr. 109)
- 8. However, because papers may vary in size, and the paper itself may vary in actual daily or shift circulation, additional men beyond the regular situation holders are needed on a daily basis to perform the same delivery work.

 (Testimony of Bogart, Harrington and Levy).
- 9. These extra men are employed from daily shaping lists. These lists are used after all the regular situation holders have reported for work, in order to fill both regular situations that are not covered and any extra work that is available on that particular shift. There are four categories of shaping lists, although all employers do not use each kind of list. (Tr. 210)
- 10. The Union was founded in 1901. From that date until the early 1950's the Union had a policy of admitting no one to membership except the first born legitmate son of a member. (N.L.R.B. v. Gayner News Co., 347 U.S. 17 (1953); Tr. 78).
- ll. At that time, the only other means of gaining entry were to be employed by a shop which was organized by the Union, or infrequently, a non-union man who made a regular situation was allowed into the Union.
- 12. Before 1950, while the industry still had a closed shop, Union members were hired before non-Union men at all industry shape-ups. Non-union men could be employed only if no Union members were available. Furthermore, when Union members became available, non-union men were discharged, no matter how long they had worked for the company. (Tr. 79, 119).

MD:mel 73-2558

- 13. Therefore, until sometime in the early 1950's, the Union was effectively closed to all but sons of members, and there were virtually no minorities (defined herein as persons that are Black, Spanish Surnamed, Oriental or American Indian) in delivery departments. (Tr. 83).
- 14. After 1952, modern hiring practices were adopted which established various categories of workers as follows:
 - Regular Situation Holders are persons holding a regular situation at a shop within the jurisdiction of the of the Union.
 - b. Group I Extras are workers who once held regular situations, but who have been laidoff, whose employers failed, or who have voluntarily transferred from a regular situation at one shop to the Group I list at another shop. They must either work five or shape six shifts per week to stay on the list.
 - Group II Industry Extras consist of all regular situation holders, Group I Extras and Pensioners in the industry. These persons are entitled to shape any industry shop for extra work on their time off from their regular job.
 - d. Group III Extras are workers who have never held a regular situation in the industry and are shaping an industry shop six days a week, or working five days a week there in order to obtain available extra work.
 - e. Group IV Extras are casual workers who shape an industry shop irregularly, but at least once a month. (Tr. 80-82; PX 2a-2e).

- 15. All workers who obtain work either as regular situation holders or as shapers are expected to perform the same type of work irrespective of their classification.

 (Testimony of Bogart, Harrington and Levy).
- 16. Employees within the occupational coverage of the Union are compensated on a basis of two distinct rates of pay at each employer (PX 2a-2e; Tr. 108).
- 17. Regular situation holders, Group I and Group II employees receive the higher rate of pay without regard for the number of shifts previously worked by that employee.

 (PX 2a-2e; Tr. 108).
- 18. Group III and Group IV employees receive the higher rate of pay beginning April 1, of a year, if they have worked 180 shifts at their listed employer in the prior calendar year. (PX 2a-2e; Tr. 108).
- 19. The privilege of becoming a member of the Group I list and Group II list in the industry, and therefore obtaining priority at shape-ups, is dependent upon obtaining a regular situation in the industry. (PX 2a-2e; Testimony of Bogart, Harrington and Levy).
- 20. Regular situations in the industry become vacant from time to tome due to the retirement or death of an employee of an employer. These regular situations must then be posted by the employer and are bid on by the employer's employees in the order of their seniority. Therefore, the least desirable regular situation in the employer's shop eventually becomes available if no regular situation holder in that shop wishes to bid on it. In that case the job is awarded to the Group-I Extra employee with the most seniority in that shop. If there are no Group I Extra employees available, that job is awarded to the senior Group III employee in the shop. (Tr. 121).

- 21. Prior to an Order of this Court on March 6, 1974, there was no limitation on the number of shifts a Group II employee could work. Neither the Union, the New York Times, the Daily News, nor the New York Post imposed any limitation upon the number of shifts a Group II employee could work at any or all of the respective publishers other than a limit of five shifts per week. (PX 2a-2e; testimony of Bogart, Harrington, Levy, Ventre and Katz).
- 22. With certain exceptions for one or two new companies who order copies, the Group II list has not been historically distributed to news companies. (Tr. 102-103).
- 23. Between 1963 and 1971 the Group II list was not revised at regular intervals. (Tr. 102-103).
- 24. From the date of the Taft-Hartley Act, the Union has issued the following types of membership cards: (PX 3a-3f).
 - a. Regular situation holders: To workers who have obtained a regular situation in the industry and held it for 30 days. (Tr. 224)
 - b. Father-Son: To the first legitimate son of a Union member.
 - c. Deceased Father-Son: To a son of a Union member who has died. (Tr. 227)
 - d. Deceased Brother: To the brother of a
 Union member who had died.
 - e. Hardship: To a member of a Union member's family, when in the Union's opinion, the Union member needs the help of another family member to support his family.

 (Tr. 226)

MD:mel 73-2558 D-59

- 25. Of the 583 new membership cards of the type set forth in Finding No. 24, issued between January 1, 1965 and January 1, 1973, 221 were cards restricted exclusively to persons in the immediate family of a member. (PX 3a-3f).
- 26. In 1970, the Union admitted 87 new members upon the grounds that said members were sons of other Union members (hereinafter such new members are referred to as "fathers-sons"). (Tr. 244)
- 27. The fathers-sons were not to receive any benefits in work opportunities over non-Union members. (Tr. 250-51).
- 28. At various times, father-son card holders have been given daily work at publishers before Group III men, without being eligible for such a preference. (Tr. 1054-55, 1466-68)
- 29. Despite the fact that they have been in the industry only a few years, many of the father-son cardholders who entered the industry in 1970, have made regular situations. (PX 3a-3f, 7(b)).
- 30. White persons have been offered the opportunity to obtain a regular situation at a News Company on certain terms since 1963, but very few minority persons have been offered the opportunity to obtain a regular situation at a News Company since 1963. (PX 3a-3f, 7(b); Proposed Finding of Fact No. 35, and Comment thereto).
- 31. Certain white persons have attained work at News Companies in violation of the collective bargaining agreement and to the detriment of minority persons (PX 60a; Tr. 743-45, 1596-7).
- 32. Since 1963, white but almost no minority employees have been awarded regular situations at major publishers in the industry. (PX 3a-3f, 5,7(b) 9, 15, 16; Kracke and Bishow affs. filed August 15, 1974; Tr. 144, 152, 961).
 - 33. Certain white persons have attained Group I

MD:mel 73-2558 D-59 listing at major publishers without being eligible under the collective bargaining agreements, or after transfer in a relatively short time from a news company to the detriment of minority persons. (PX 7(b), 26(c), 60a; Tr. 964-65, 1596-7).

- 34. The most relevant and available labor force for jobs in the delivery departments of the employers consists of males with a high school education or less.
- 35. Employment opportunities among the defendants (defined in the Agreement as regular situations together with Group I positions) are distributed within the geographic jurisdiction of the Union in the following reasonably contiguous and identifiable areas:
 - 1) New York City and Nassau County 2008;
 - 2) Mt. Vernon, New York 86;
 - 3) Suffolk County, New York 12;
 - 4) Stamford, Conn. 36; and
 - 5) Bergen, Essex, Hudson, Middlesex, Monmouth,
 Passaic and Union Counties, New Jersey 441.

The employers within each such area are most likely to draw their employees from the respective labor forces within that area.

Comment

The following charts set forth the basis for these figures. Included are all defendant employers who have signed the Agreement and are still in business. The five geographic areas were chosen because they are the most distinct, cognizable sub-areas of the New York - Northeastern New Jersey-Connecticut metropolitan area. The larger sub-areas consist of contiguous, fairly compact sub-parts. Because of the location of the employers within each of the five areas, and the boundaries between the areas, it is more fair and reasonable to identify the employers with their respective area, rather than the entire New York - New Jersey-Connecticut Metropolitan area, and to assume that area is the most likely source of labor force for the employers therein.

600 1072 0 474 174 -8- A-30



State New York		npany	County	Reg.
	1.	Amsterdam News 2340 8th Ave. N.Y., N.Y. 10027	New York	7*
	2.	Bay City News Co. 10 Cross St. Staten Is. N.Y.	Richmond	. 8
	3.	Brodsky News Inc. 124-10 Metropolitan Ave. Kew Gardens, N.Y. 11415	Queens	9
5	4.	Brooklyn News Corp. One Ave. M Brooklyn, N.Y.	Kings	20
	5.	Dow Jones & Co. 22 Courtland St. New York, N.Y. 10007	New York	15
	6.	El Diario 131 Hudson St. New York, N.Y. 10013	New York	7

^{*} The following abbreviations are used: Plaintiffs' Exhibit Trial Transcript - T

^{**} Based upon forty-six jobs for only one day a week.

81t.	Ī	III	Total Minority Employees	Evidentiary Basis*
			0	Testimony of Selvin Michael, Tr. 1137.
•			0	PX 31; DSWX 1
			. 0	PX 31; DSWX 2
			0	Devorkin Aff. filed August 15, 1974, Exh. A
•	4		0	Stip. filed August 15, 1974, between Dow Jones Co. and E.E.O.C.
				PX 7(b)

- PX; Defendant Suburban Wholesalers' Exhibit DSWX;

State	Com	pany	County	Reg. S
New York				
	7.	Fairchild Publications 7 E. 12th Street New York, N.Y.	New York	5
	8.	Flushing News Company 133-20 41st Ave. Flushing, N.Y.	Queens	8
SPO 1972 O 40	9.	Kings County Delivery Co. 47 Chrystie Street New York, N.Y. 10002	Queens 8 Co. New York 15 Queens 29 New York 38	
474-479	10.	Lang News Co. 47-15 35th Street Long Island City, N.Y.	Queens	29
	11.	Manhattan News Corp. 627 W. 42nd Street New York, N.Y. 10036	New York	38
	12.	Metropolitan Magazine Co. 47-25 34th Street Long Island City, N.Y.	Queens	24
	13.	Metropolitan News Co. 47 Chrystie Street New York, N.Y.	New York	123

1t.	Ī	III	Total Minority Employees	Evidentiary Basis
				PX 34(h)
			0	PX 31; DSWX 4
			1	Stip. filed August 15, 1974, between Metropolitan News Co. and E.E.O.C.
			0	Stip. filed August 15, 1974, between Metropolitan News Co. and E.E.O.C.
			. 0	PX 7(b)
			1	Stip. filed August 15, 1974, between Metropolitan News Co. and E.E.O.C.
			3	Stip. filed August 15, 1974, between Metropolitan News Co. and E.E.O.C.

State New York	Comp	any	County	Reg.
	14.	N.Y. News	New York	700
	15.	N.Y. Post	New York	280
§	16.	N.Y. Times	New York	340
1921 - 424 154	17.	Weinberg News Co. 145 - 7th Street Brooklyn, N.Y. 11215	Kings	50
	18.	Woodhaven News Co., Inc. 137-44 94th Ave. Jamaica, N.Y. 11435	Queens	45
		New York City Total		1723

Sit.	Ī	III	Total Minority Employees	Evidentiary Basis
	36	174	24	Kracke Aff. filed August 15, 1974
	38		1	PX 16 and 17; Ellenthal Aff. filed August 15, 1974
	31	37	. 17	PX 5, 6, 8 and 9; Bishow Aff. filed August 15, 1974
			6	PX 32
			1	PX 32
	109	211	54	

	State New York	Comp	any	County	Reg.
		19.	Crescent News Distributors, Inc. Fulton & Thorens Aves., Box 123 New Hyde Park, Long Island	Nassau	45
GPO 1872 0		20.	Imperial News Co. 80 Voice Road Carle Place, N.Y.	Nassau	44
474 479		21.	Long Island News Corp. Terminal Road New Hyde Park, N.Y.	Nassau	45
		22.	Long Island Press 92-24 168 Jamaica Hempstead, N.Y.	Nassau	39
			Nassau Total		173
			New Yearle Office & Newson Man		
	. 6		New York City & Nassau Tota	gT .	1896

<u>sit</u> .	Ī	III	Total Minority Employees	Evidentiary Basis
	. 2		0	PX 31; DSWX 3a
			0	PX 33
		9	0	PX 31; DSWX 9a
	1		1	PX 61, pp. 4-5, and PX 62
	3	9	1	
	112	220	55	

	State	Comp	eany	County	Reg.
	New York				
		23.	East Island News 601 Old Willets Path Hauppauge, N.Y.	Suffolk	12
		24.	Gaynor News Co,. Inc. 225 South 4th Avenue Mt. Vernon, New York 1055	Westchester 1	86
PO 197	New Jersey				
2 0 474 479		25.	Hackensack News Co., Inc. 364-9 Washington Ave. Carlstadt, N.J.	Bergen	29
		26.	Hudson County News Company 1305 Paterson Plank Rd. N. Bergen, N.J. 07047	Hudson	69
		27.	Jersey Coast News Co. 3rd Ave. at Memorial Pkwy Asbury Park, N.J. 07712	Monmouth	27
		28.	Morning Daily Ledger Star Ledger Plaza Newark, N.H.	Essex	3

				, , , , , , , , , , , , , , , , , , ,
Sit.	Ī	III	Total Minority Employees	Evidentiary Basis
			0	Testimony of William J. Fello, Tr. 1595
	0	6	0	PX 31; DSWX 5a
		1	1	PX 31; DSWX 6a
•		3	o ·	PX 31; DSWX 7a
	8	7	1 .	PX 31; DSWX 8a
			· 0	Stip. at trial, Tr. 2847

State New Jersey	Comp	an <u>y</u>	County	Reg.
	29.	New Brunswick Newsdealers Supply Co., Edgeboro Road East Brunswick, N.J.	Middlesex	24
Q .	30.	Newark Newsdealers 520 S. Orange Ave. Newark 3, N.J.	Essex	110
190 1972 O 424 179	31.	Passaic Country News Co. Inc. 64-66 Beech Street Paterson, N.J. 07501	Passaic	45
-	32.	Rockland News Dealer 406 Cedar Lane Teaneck, N.J.	Bergen	7
	33.	S. Rachles, Inc. 364 Oak Street Passaic, N.J.	Passaic	18
	34.	T. & T. News Co. Inc. One News Plaza Paterson, N.J.	Passaic	35

Sit.	Ī	III	Total Minority Employees	Ev	lden	tiary	Basis	
		5	o	≱ PX	31;	DSWX	10a	
	3	20	11	FΧ	31;	DSWX	lla	
		3	1	PX	31;	DSWX	12a	The state of the s
			0	PX	31;	DSWX	14a	
			0	PX	3,1;	DSWX	13a	
			1	РХ	33			

State	Comp	any	County	Reg.
New Jersey				
	35.	Union County Newsdealers Supply Co. 610 Dowd Ave. Elizabeth, N.J. 17201	Union	63
		New Jersey Total		430
Conn.				
	36.	Standard News Co., Inc. Harvard Ave. & Sellack St. Stamford, Conn.	Fairfield	36
		Grand Total Entire Area		2460

Sit.	Ī	III	Total Minority Employees	Evidentiary	Basis
	. 0	4	0	PX 31; DSWX	16a
		- 116	•		د
	11	43	15		
		3	0	PX 31; DSWX	15a
	123	272	70		·

MD:mel 73-2558 D-59

- 36. The approximate minority proportions of the labor force pool available for employment in this industry, in the areas within the geographic jurisdiction of the union, are as follows:
 - 1) New York City and Nassau County 32.88%
 - 2) Mt. Vernon, New York 41.13%
 - 3) Suffolk County, New York 41.13%
 - 4) Stamford, Conn. 12.71%
 - 5) Bergen, Essex, Hudson, Middlesex, Monmouth, Passaic and Union Counties, New Jersey -17.37%

Comment

Table A. The basis for the Table A figures is the calculations and supporting data set forth in the following Tables B(1), B(2), B(3), C, D(1), and D(2). The source of original data is indicated in the table (e.g., as Table 119). This source is the pertinent part of tables in two United States Department of Commerce publications: 1) General Population Characteristics, 1970 Census of Population - Vols.

Connecticut, New Jersey and New York; and 2) General Social and Economic Characteristics 1970 Census of Population - Vols. Connecticut, New Jersey and New York. Copies of the pertinent parts of these tables are annexed hereto as Appendices A and B.

The census tables for Connecticut, New Jersey and New York do not reflect data precisely for Spanish Surnamed Americans. The tables' best approximation for persons in these areas who are of Spanish origin, or identified as such, is the data listed for Spanish language persons (defined in Appendix B hereto). However, not every table of social or economic characteristics provides information for Spanish language persons, and therefore some conversions must be made.

Table A

Table A computes for each geographic area the percentage of Black and Spanish language males in the male labor force 16 years old and over with a high school education or less. The most conservative Oriental percentages, computed irrespective of education in Tables D(1) and D(2), are then added to the Black and Spanish language figures. The result is the percentage of minorities in the male labor force 16 years old or over with a high school education or less.

Tables B(1), B(2) and B(3)

Table B(1) computes the total male labor force with a high school education or less. First, the percentage of the male <u>population</u> 25 years old and over with a high school education or less is computed. Then, assuming this percentage is approximately the same for the male <u>labor force</u>, it is multiplied times the total male labor force to determine the male labor force with a high school education or less.

Table B(2) computes the total black male labor force with a high school education or less. First, the percentage of the black male <u>population</u> over 25 years old and over with a high school education or less is computed. Then, assuming this percentage is approximately the same for the black male <u>labor force</u>, it is multiplied times the total black male labor force to determine the black male labor force with a high school education or less.

Table B(3) computes the total Spanish language male labor force with a high school education or less. First, the percentage of the <u>Puerto Rican male population</u> 25 years old and over with a high school education or less is computed. Then it is assumed this percentage is approximately the same for the <u>Spanish language male population</u> 25 years old and over with a high school education or less.

MD:rs 73-2558 N-156 Finally, assuming this percentage is approximately the same for the Spanish language male labor force, it is multiplied times the total Spanish language male labor force (from Table C) to determine the Spanish language male labor force with a high school education or less.

Table C

This table computes the approximate number of Spanish language males 16 years or older in the labor force. It is done by assuming that these Spanish language males in the labor force are in a ratio to Puerto Rican males in the labor force in the same ratio as the Spanish language population is to the Puerto Rican population. For Stamford the figure comes directly from the Census tables. Table C is then used in Table B(3).

Tables D(1) and D(2)

Table D(1) Method 1 computes the Oriental percentage of the total male labor force. The percentage of Orientals in the <u>population</u> is assumed to be the percentage of Orientals in the <u>male labor force</u>.

Table D(2), Method 2, first computes the ratio of Orientals to Black in the population. Then, assuming this is approximately the same as the ratio for Orientals to Blacks in the male labor force, it is multiplied times the Black male labor force to derive the Oriental male labor force. This is then divided by the total male labor force to derive the percentage of Oriental males in the total male labor force.

Table D(2), Method 3 first computes the ratio of Orientals to Puerto Ricans in the <u>population</u>. Then assuming this is approximately the same as the ratio for Orientals to Puerto Ricans in the <u>male labor</u> force, it is multiplied times the Puerto Rican male labor force to derive the Oriental male labor force.

md:rs 73-2558 N-156 This is then divided by the total male labor force to derive the percentage of Oriental males in the total male labor force.

For each of the five geographic areas, the most conservative of the figures derived by the three methods is then used in Table A, without doing any weighting for amount of education.

CONCLUSIONS TABLE A

		Total Males in Labor Force 16 yrs. old and over who have a high school education or less.	Black Males i Labor Force 1 old and over have a high s education or
State	County	(Table B (1))	(Table B (2)
N.Y.			
	Bronx	285,190	61,432
CHO 1972 O 474 459	Kings	513,622	110,894
	Nassau	239,660	10,660
5	N.Y.	267,901	74,096
	Queens	408,677	47,718
	Richmond	58,040	2,449
	six county totals	1,773,090	307,249
	%Minority of Total Male Labor Force 16 or over with hi school education o	gh	
	less		17.33%

characteristics these Tables oriental refers to those described

Minority

old and over, as a % of total males in Percentage who old and over who have a high school chool Labor Force 16 and education or less. less. over, irrespective of education. (Table B (3)) (Table D) 74,517 67,838 7,657 62,681 32,833 1,792 247,318 32.88% 1.60% 13.95% l as "others" in U.S. Dept. of Commerce, General Population

Oriental Males in Labor Force 16 yrs.

Spanish-language males

in Labor Force 16 yrs.

6 yrs.

•			TABLE A
		Total Males in Labor Force 16 yrs. old and over who have a high school education or less.	Black Males in Labor Force I old and over have a high seducation or
State	County	(Table B (1))	(Table B (2)
N.Y.	Suffolk	192,416	8,944
1972 G 494 479	<pre>% Minority of Total Male Labor Force 16 or over with his school education of less</pre>	gh	4.65%
	Mt. Vernon	13,863	5,148
	% Minority of Tota Male Labor Force 16 or over with hi school education o less	gh	37.13%
N.J.			
	Bergen	166,971	4,956
	Essex	173,187	51,260
8			

(Cont'd.)

6 yrs.

who

chool

less.

Spanish-language males in Labor Force 16 yrs. old and over who

have a high school education or less.

Oriental Males in Labor Force 16 yrs. old and over, as a % of total males in Labor Force 16 and

over, irrespective of education.

(Table D)

Total. Mincrity Percentage

(Table B (3))

8,114

4.22%

466

3.36%

4,248

10,193

.36%

.64%

41.13%

9.23%

TABLE A

Total Males in Labor Force 16 yrs. old and over who have a high school education or less. Black Males i Labor Force 1 old and over have a high s education or

State	County	(Table B (1))	(Table B (2))
N.J.			
	Hudson	120,950	10,990
977 0	Middlesex	134,707	4,757
94 40*	Mommouth	95,213	7,447
	Passaic	107,790	9,313
	Union	121,879	11,837
	7County Totals 1 Minority of Total Male Labor Force, 16 or over with high		100,560
	school education or less		10.92%

17.37%

(Cont	'd.)		
yrs. who chool less.	Spanish-speaking males in Labor Force 16 yrs. old and over who have a high school education or less.	Oriental Males in Labor Force 16 yrs. old and over, as a % of total males in Labor Force 16 and over, irrespective of education.	Total Minority Percentage
	(Table B (3))	(Table D)	
	18,808		
	4,763		
	2,261		
	7,360		
	5,412		
	53,045		

.59%

5.86%

Total Males in Labor Force 16 yrs. old and over who have a high school education or less.

Labor Force 16 old and over whave a high se education or 1

State County

(Table B (1))

(Table B (2))

Conn.

1977 0

Stamford (SMSA)

30,423

2,848

% Minority of Total Male Labor Force 16 or over with high school education or less.

9.86%

ont'd.)

yrs. ho hool

Spanish-language males in Labor Force 16 yrs. old and over who have a high school education or less. ess.

(Table B (3))

Oriental Males in Labor Force 16 yrs. old and over, as a % of total males in Labor Force 16 and

over, irrespective of education. (Table D)

Total Minority Percentage

933

3.07%

. 28%

12.71%

COMPUTATION OF MALE LABOR FORCE WI

TABLE B (1)

STATE	COUNTY	TOTAL MALE LABOR FORC (Table 121	E	NUMBER OF TOTAL POP. MA WITH HIGH SCH EDUCATION OR (Table 120)
Ŋ.Y.	Bronx	335,518		316,475
	Kings	620,316		557,042
• • •	Nassau	379,210		233,783
7	N.Y.	414,066		304,783
	Queens	544,177		429,044
	Richmond Six	74,697		59,557
	County Total	2,367,984		1,900,684
	Suffolk	268,737		199,598
	Mt. Vernon	18,964	(Table	85) 15,497 (Ta

TH HIGH SCHOOL EDUCATION OR LESS

TOTAL	POPULATION		•
LE 25+	NO. OF TOTAL MALE POP. 25+	COLUMN 4 + COLUMN 5= % OF MALES WITH HIGH SCHOOL EDUCATION OR LESS	COLUMN 3X COLUMN 6= MALE LABOR FORCE WITH HIGH SCHOOL EDUCATION OR LESS
	(Table 120)		
	372,402	85.0%	285,190
	672,859	82.3	513,622
	370,219	63.2	239,660
	470,904	64.7	267,901
,	571,348	75.1	408,677
	76,613	77.7	58,040
	2,534,345	75.0%	1,773,090
	278,816 .	71.6	192,416
ble 83)	19,808 (Table 83)	73.1	13,863

STATE	COUNTY	TOTAL MALE LABOR FORCE (Table 121)	NUMBER OF TOTAL POP. MA 25+ WHO HAVEN ATTENDED COLL (Table 120)
ी.J.	Bergen	249,957	165,426
20 .	Essex	231,843	180,798
4 .	Hudson	160,838	144,620
	Middlesex	157,922	114,160
	Monmouth	118,424	78,250
	Passaic	122,908	99,649
	Union 7 County Total	149,545 1,191,437	106,749
	Stamford (SMSA)	55,720 (Table	85) 30,288 (Tabl

OTAL POPULATION (Cont'd.)

LE 'T EGE	NO. OF TOTAL MALE POP. 25+ (Table 120)	COLUMN 4 + COLUMN 5= % OF MALES WITH HIGH SCHOOL EDUCATION OR LESS	COLUMN 3X COLUMN 6= MALE LABOR FORCE WITH HIGH SCHOOL EDUCATION OR LESS
	247,605	66.8	166,971
	241,952	74.7	173,187
	167,996	75.2	120,950
	151,161	85.3%	134,707
	115,942	80.5%	95,213
	124,100	87.7%	107,790
	150,637 1,199,393	81.5% 74.2%	121,879 920,697
e.84)	555,514 (Table 84)	54.6%	30,423

TABLE B (2) BLACK POPULATION

<u>State</u>	County	Total Bla Male Lab Force. (Table 1	or School Education or less	gh a- No. Black
N.Y.	Bronx Kings Nassau N.Y. Queens Richmond	68,107 124,460 12,844 84,104 57,354 2,923	65,132 115,334 10,817 87,247 47,960 2,350	72,200 129,462 13,032 99,076 57,664 2,804
1972 0 474 479	6 County Total	349,792	328,840	374,238 12,118
	Suffolk Mt. Vernor		10,556 Table 5,146 (Tab 92) 91)	le 5,873 (Table
N.J.	Bergen Essex Hudson Middlesex Monmouth Passaic Union	6,156 56,766 12,090 5,406 8,386 9,865 13,315	4,871 51,767 11,096 5,153 7,458 8,776 11,831	6,051 57,328 12,204 5,857 8,403 9,300 13,423
	7 County Total	111,984	100,952	112,566
Conn.	Stamford (SMSA)	3,222(T	able 2,718(Tabl	e 3,075(Table 91)

Col. 4 + Col. 5=	Col. 3 X Col. 6= Black Male Labor
% of Black Males with High School Ed- ucation or less	Force With High or less
90.2% 89.1% 83.0% 88.1% 83.2% 83.8%	61,432 110,894 10,660 74,096 47,718 2,449
87.9%	307,249
87.1%	8,944
87.6%	5,148
80.5% 90.3% 90.9% 88.0% 88.8% 94.4%	4,956 51,260 10,990 4,757 7,447 9,313 11,837
89.7%	100,560
88.4%	2,848

State	County	Total Spanish- langauge Male Labor (Table C)	25+ W1t	rto-Rican Ma h High Schoo on or less 130)	
N.Y.	Bronx Kings Nassau N.Y. Queens Richmond	77,461 70,081 8,555 65,429 37,099 1,941	57,509 45,702 1,395 38,629 6,565 615		
•	6 County Total	260,566	150,415		
	Suffolk	9,457	2,987		
	Mt. Verno	n 558	71	(Table 97)	

^{2.} The figures in Columns 4 & 5 are actually figures for Puer only give figures for the former group. We are assuming that as Puerto Rican males.

SH LANGAUGE POPULATION

•	No. Pue Rican M 25+ (Table	ales	Col. 4 + Col. 5= % of Sp.language males with High School Education or less.	Col. 3X Col. 6= Sp. language male labor force with High School Education or Less.
	59,808 47,235 1,558 40,305 7,416 666		96.2% 96.8% 89.5% 95.3% 88.5% 82.4%	74,517 67,838 7,657 62,681 32,833 1,792
	156,988		95.8%	247,318
	3,481		85.8%	8,114
	85	(Table	83.5%	466

to Rican males not Spanish language males, since census tables Spanish language males attend school with the same frequency

State	County	Total Spanish Language Male Labor (Table C)	No. Puerto-Rican Males 25+ With High School Education or less (Table 130)	
N.J.				
. 0 187 O	Bergen Essex Hudson Middlesex Mommouth Passaic Union	5,590 10,640 19,551 4,998 2,784 7,588 6,007	675 4,728 6,094 2,082 688 3,558 874	
1	7 Country			
	7 County Total	57,158	18,699	
Coon.				
	Stamford (SMSA)	1,493(Table 98)	e 812 (Table 97)	

ISH LANGUAGE POPULATION (Cont'd)

No. Puert Rican Mal 25+ (Table 13	to % of the second seco	. 4 + Col 5= of Sp. language es with High cool Education less.	labor for	Col. 6= dage male rce with High ducation or
888 4,937 6,334 2,185 847 3,669 970	76. 95. 96. 95. 81. 97.	8% 2% 3% 2% 0%	4,248 10,193 18,808 4,763 2,261 7,360 5,412	
19,830	94.	3%	53,045	
1,299 (Ta	at le 62.	5\$	933	

TABLE

				IADL
State	County	Male Puerto Ricans Above 16 in Labor Force (Table 131)	x	Spanish Languag Puerto Rican Po
N.Y.				
6	Bronx	60,241	x	407,322 316,772
	Kings	48,515	x	392,575
G.	Nassau	1,693	x	271,769 36,503 7,224
P572 () 474	New York	38,774	x	312,722 185,323
7	Queens	8,000	x	153,691 33,141
	Richmond	762	x	12,320
	Suffolk	3,977	x	40,849

OTAL NUMBER OF SPANISH BOVE 16 IN THE LABOR FORCE

C

Pop. (Table 119) . (Table 119)	•	Spanish Language Males Above 16 in Labor Force
		77,461
	•	70,082
		8,555
	-	65,429
	•	37,099
	•	1,941
		9,457

				TABL	E C
	State N.Y.	County	Male Puerto Ricans above 16 in Labor Force		Span: Puer
	N.I.	Mt. Vernon	99 (Table 98)	x	1780 316
	N.J.		Resume use (Tables 131)		(Res
11 OFD		Bergen	989	x	2214 391
GPO 1972 O - 474-419		Essex	5665	x	5498 2927
*19		Hudson	7109	x	8955 3256
		Middlesex	2631	x	2152 1133
		Monmouth	1056	x	1017 385
		Passaic	4749	x .	3140 1965
		Union	1246	x	2358
	Conn.	Stamford (SMSA)			409

Cont'd.)		
sh Language Pop.		Spanish Language Males above 16 In Labor Force
(Table 81) (Table 81)		558
ame use		
5		5,590
5	•	10,640
<u>.</u>		19,551
9	-	4,998
) 7	•	2,784
3	•	7,588
1 ·	•	6,007
		1,493 (Table 98)

Three methods were used to calculate the male Orien not include this information. The first method involved find population and assuming that it was the same percentage as the entailed finding the ratio of Orientals to Blacks and multiple Black males in the labor force, assuming Orientals were in the third method involved taking a similar ration with respectioner, more conservative figure was used in Table A. Moreoved degree, since we did not adjust it for education, and it is ceive a higher education less frequently than whites.

ital labor force, because census data does ling the Oriental percentage of the entire lat of Orientals in the labor force. The second lying this fraction times the number of labor force proportionately to Blacks. It to Puerto Ricans. In all cases, the ler, this figure is conservative in another likely that Orientals, as a minority, re-

COMPUTATION OF ORIE MALE LABOR FORCE

TABLE D(1) METH

STATE

NEW YORK

NEW JERSEY

COUNTY

Bronx

Kings

Nassau

N. Y.

Queens

Richmond 6 County Total

% of Pop. and Labor Force

Suffolk

% of Pop. and Labor Force

Mt. Vernon

% of Pop. and Labor Force

Bergen

Essex

Hudson

OF 12 OF 10 AV

OD I

TOTAL POP. (Table 33)	TOTAL NUMBER OTHERS (ORIENTALS) (TABLE 33)
1,471,701	33,161
2,602,012	40,030
1,428,080	6,647
1,539,233	69,489
1,986,473	33,179
295,443 9,322,942	2,047 184,553
100.00%	1.98%
1,124,950	5181
200.00%	46%
72,778	531
100.00%	.73%
645,371	4,620
661,486	9,892
450,727	6,393

N.J.

COUNTY

Middlesex

Monmouth

Passaic

Union

7 County Total

% of Pop. and Labor Force

Stamford (SMSA)

% of Pop. and Labor Force

Conn.

GO 1977 O 474 F

d.)

TOTAL POP.	TOTAL NUMBER OTHERS (ORIENTALS)	
396,384	3,149	
310,125	2,752	
328,203	3,650	
393,831 3,186,127	2,860 33,316	
100.00%	1.05%	
108,798	732	
100%	.67%	

-34- A-54

		27 M26 O 2251	N CHO	STATE	d-42
Male Oriental Labor Force as % of Total Male	Suffolk	Hale Oriental Lator Force as % of Total Hale Labor Force	Mt: Vernon	AZITOOD	
	5,181	121 18,964	531	TOTAL ORIENTALS IN POP. (Table 33)	
980 (Col.7) = 268,737 (Col.12)	54,312	(Col. 7)= .64% (Col.12)	25,883 .0205989 (Table 91)	TOTAL BLACKS IN POP. (Table 125)	TABLE D (
Col.7) = Col.12)	.0953932	.64%	.0205989	RATIO BLAC ORIENTALS:MALE BLACKS LABO (Tab	2) METHODS
.36% by Method 2	10,269		5,877 (Table 92)	BLACK :MALE LABOR (Table 126)	TABLE D (2) METHODS 2 and 3 (Cont'd)
ethod 2	980) 121	ORIENTAL MALE LABOR FORCE= COLUMN 5 X COLUMN 6	(Cont'd)
	17,179	166 (Col.11) 18.964(Col.12)	316 (Table 97)	PUERTO RICANS III POP. (Table 119)	- 11
1199 (Col. 11) 268,737 (Col. 12)	.3015891	11) = .88%	1.6893797	RATIO ORIENTALS: PUERTO RICANS	
(Col. 1 (Col. 1	3,977		99 (Table	RICAN MALE LABOR (Table 131)	. 11
1) = .45% by 2) Method 3	1,199		166	MALE LABOR FORCE= COLUMN 9 X COLUMN 10	
by d 3	268,737		13,964 (Table 85)	MALE LABOR FORCE (Table 121)	. 11

							•	
Oriental Male Labor Force as % of Total Male	Union 7 County Total	Passa1c	Monmouth	Middlesex	Hudson	Essex	Bergen	
	2,860	3,650	2,752	3,249	6,393	9,892	4,620	TOTAL ORIENTALS IN POP. (Table 33)
7,021 (Col.7) = 1,191.437 (Col. 12)	60,786 .0470503 540,058 6.17%	49,998	38,044	25,755	61,358	279,068 .0354465	25,049	TOTAL BLACKS IN POP. (Table 125)
(Col.7) = (Col. 12)		49,998 .0730029	38,044 .0723372	25,755 .1222675	61,358 .1041970	.0354465	25,049 .1844385	RATIC ORIENTALS: BLACKS
.59% by Method 2	13,315	9,865	8,386	5,406	12,090	56,766	6,156	TABLE D (2) METHODS 2 BLACK ORIENTAL TO THE TOTAL TO THE
ethod 2	626 7,021	720	607	661	1,260	2,012	1,135	METHODS ORIENTAL MALE LABOR FORCE= COLUMN 5 X COLUMN 6
	4,892 105,493	19,656	3,857	11,333	32,563	29,274	3,918	METHODS 2 and 3 (Cont'd) ORIENTAL TOTAL RATIO MALE PUERTO ORIEN LABOR RICANS PUERT FORCE= IN POP. RICAN COLUMN (Table 5 X 119) COLUMN 6
$\frac{7.570}{1,191}$, 437 (Col. 11) = .64% by Method 3	.5846279 1,246 728 31.58 2 23,445 7,570	.1856939 4,749	.7135079 1,056	.2778611 2,631	.1963271	.3379107 5,665 1,914	1.179173	nt'd) RATIO ORIENTALS: PUERTO RICANS
(Col.1 (Col.	23,445	4,749	1,056	2,631	7,109 1,396	5,665	989	PUERTO RICAN MALE LABOR (Table 131)
1) = .64%	7,570	882	753	731	1,396	1,914	989 1,166	ORIENTAL TOTAL MALE LABOR FORCE= FORCE COLUMN (Tabl 9 X 121) 10
by Method	393,831	328,203	310,125	396,384	450,727	661,486	645,371	TOTAL MALE LABOR FORCE (Table 121)

N.J.

CPO 1972 O- 474 479

-36- A 58

625-625-0	conn.	73-2558 G-42 STATE
Oriental Male Labor Force as of Total Male Labor Force	Stamford (SESA)	73-2558 G-42 STATE COUNTY
7.9	732	TOTAL ORIENTALS IN POP. (Table 33)
156 (Co	15,074 .485443 (Table 91)	TABLE D (2 TOTAL BLACKS IN POP. (Table 125)
01. 7) = .	.485443	P) METHODS 2 an BLAC BLAC ORIENTALS:MALE LABO (Tab 126
156 (Col. 7) = .28% by Method 2 $\frac{75,720}{(Col. 11)}$	3,222 (Table 92)	TABLE D (2) METHODS 2 and 3 (Cont'd) TOTAL RATIO BLACK ORIE BLACKS ORIENTALS: MALE IN POP. BLACKS (Table FORC (Table 126) 5 X COLU
od 2	156	ONT'd) ORIENTAL TOTAL MALE PUERT LABOR RICAN FORCE= IN PO COLUMN (Tabl) 5 X 119) 6
	6,049 3/ (Table 97)	1 0.400
181 (Col. 11) = .32% by Method 3 $55,720 (Col. 12)$.1210117 1,493 3/1811 3/ (Table 98)	RATIO ORIENTALS: PUERTO RICANS
11)	1,493 (Table 98)	PUERTO C RICAN I MALE I LABOR I (Table 0 131)
= .32% by	1811	ORIENTAL TOTAL MALE MALE LABOR FORCE= FORCE COLUMN (Tab) 9X 121) 10
Method 3	55,720 (Table 85)	TOTAL MALE LABOR FORCE (Table 121)

3/ Spanish language population substituted for Puerto Rican pop. because of census data (Table 98).

-37- A-59

- 37. The Union has about forty-two hundred members. About twenty-eight hundred are actively engaged in the trade, and about twenty-five hundred have been members of the Union more than twenty years. (Tr. 226, 2158, Proposed Finding of Fact No. 35, and Comment thereto).
- 38. Minorities comprise only about 1% of the Union's membership. (Tr. 264; Proposed Finding of Fact No. 35, and Comment thereto).
- 39. The Union has never had a minority president, vice-president, treasurer or secretary. (Tr. 332-3).
- 40. At all employers, the percentage of minority foreman, assistant foreman, union chapel chairman or assistant chapel chairman has been far smaller than the percentage of minorities in the labor force in each employer's geographic area.
- 41. Because the Union is now about 1% black and because about 38% of its new memberships in the last six years have been given to persons in the immediate family of its members, (See Proposed Findings of Fact Nos. 25 and 35), and because of the current employment practices and collective bargaining agreements, minority representation in the Union and minority employment opportunity in the industry will not substantially increase.
- 42. (a). It is reasonable to assume that absent the practices in this industry, minorities would hold approximately the same percentage of jobs in this industry as they are the percentage of the male labor force 16 years old and over with a high school education or less in the five subareas within the union's geographic jurisdiction.
- (b). Since this percentage of jobs is about 30.2%, the Agreement's Goal of 25% minority employment by June 1, 1979, is fair and reasonable.

Comment

The following chart computes the number and percentage of minority jobs in the industry, absent discrimination, based upon the job distribution from Proposed Finding of Fact No. 35 and the minority labor force statistics from Proposed Finding of Fact No. 36.

COMPUTATION OF MINORITY LABOR FORCE PERCENTAGE FOR ENTIRE AREA

Area	Minority Labor Force Percentage (Proposed Finding X No. 36)	Employment Opportunities (Proposed Find- ing No. 35)	No. Minority Employment Opportunities
New York City and Nassau County	32.88	2008	660
Mt. Vernon New York	41.33	86	36
Suffolk County	9.23	12	. 1
Stamford,	12.71	36	5
7 Northern New Jersey	17.37	441	77
Counties	TOTAL:	2583	779
Minority Employment	Percentage of Employment Op		

Dated: New York, New York August 15, 1974

Goal

Respectfully submitted,

PAUL J. CURRAN United States Attorney for the Southern District of New York Attorney for the Equal Employment Opportunity Commission, Plaintiff in 73 Civ. 4278

MICHAEL S. DEVORKIN Assistant United States Attorney Of Counsel

in the Industry

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MAY1 1974
S. D. OF N. Y.

JOHN R. PATTERSON, individually and on behalf of all of the persons similarly situated,

Plaintiff,

73 Civ. 3058

MAY 2 1974

NEWSPAPER AND MAIL DELIVERERS' UNION

OF NEW YORK AND VICINITY, et al.,

Defendants.

Derendants.

UNITED STATES OF AMERICA,

Plaintiff,

73 Civ. 4278

NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY, et al.,

Defendants.

DOMINICK VENTRE, FRANK CHILLEMI, GEFALD KATZ, et al.

Intervenors.

JAMES V. LARKIN, individually and on behalf of all of the persons similarly situated,

Intervenor.

LAWRENCE W. PIERCE, D.J.

*

MEMORANDUM AND ORDER

These two employment discrimination actions have been brought by and on behalf of minority group workers and applicants for work in the publications delivery industry. Both the government and the private actions are premised on 42 U.S.C. §§2000e et seq. In addition the private action alleges claims pursuant to 42 U.S.C. §1981. The complaint in each action charges that the practices and policies of the Newspaper and Mail Deliverers' Union (the Union), combined with the structure of its contract with publishers and wholesale distributors in the New York City area, operate to deny minority group workers employment, or to relegate them to Regular Extra status (daily shaping) without a fair opportunity to achieve Regular status and, thus, Union membership. Each action demands, among other forms of relief, affirmative action designed to remedy alleged past discrimination in the industry.

The plaintiffs in the private action are black workers who shape from the Regular Extra lists maintained by various of the defendant newspapers. Of the defendants who maintain a Regular Extra list, the New York Daily News

has by far the largest. It totals 220 shapers. Twelve are said to be black. $\frac{1}{}$

The remaining 208 workers on the Daily News

Regular Extra list, who may be characterized as members

of non-minority groups (in other words, white) have moved

as two separate groups to intervene in both the private

and the government actions. 2/ One of these groups, designated

as the Ventre group, numbers approximately 100 and consists

of workers who have earned 180-days status by working at

least that many days in a calendar year. 3/ The other group,

designated as the Larkin group, numbers approximately 100

and consists of the white "Regular Extras" who have not

attained 180-day status. 4/

^{1/} The only other substantial Regular Extra list is maintained by defendant New York Times. It totals 37, nine of whom are said to be black.

One group seeks intervention as named individuals.

The other seeks to intervene as a class represented by a single named individual. Symmetry would not appear to be of great consequence here, therefore, each may proceed in accordance with his respective submissions on this issue.

Ten of the 180-day men are black and would seem, therefore, to be more properly counted among the members of the private plaintiffs' class represented by Roland Broussard and by the government in its action.

Larkin's original submission asserts that he represents all non-minority members on the Daily News Regular Extra list. Ventre's counsel challenged this assertion by letter to the Court dated March 22, 1974, and

The situation is somewhat unusual, in that the interest of the proposed intervenors is two-fold. On one hand, their job security and status is threatened by the affirmative relief d manded by the main plaintiffs, and to that extent, their proposed intervention is based on grounds common to racial discrimination cases and is adverse to the plaintiffs' interest. See, e.g., Guardians Association v. Civil Service Commission, 490 F.2d 400 (2d Cir. 1973); Vulcan Society v. Civil Service Commission, 490 F.2d 387 (2d Cir. 1973); Harper v. Kloster, 486 F.2d 1134 (4th Cir. 1973); Chance v. Board of Education, F. Supp. (S.D.N.Y. 1973), Unpub. Op., #70 Civ. 4141, December 12, 1973, where the Court permitted intervention it had earlier denied, 51 F.R.D. 156 (S.D.N.Y. 1970) when it became apparent that the plan for affirmative action might result in disadvantage to the non-minority proposed intervenors. But, on the other hand, their interest in challenging the present system generally parallels that of the government and the

^{4/(}cont.) Larkin's counsel has informed the Court that his motion should be read to assert representation of non-180-day men only.

private plaintiffs to the extent that the practices and contract in the industry can be said to deny opportunity to all "Regular Extras," including the intervenors.

At a March 18, 1974 pretrial conference the attorneys for each proposed intervening group assured this Court that in spite of the wide ranging nature of their proposed complaints, their interest was concentrated on

^{5/} See Larkin Proposed Intervenor Complaint, March 8, 1974, Third Claim for Relief, p. 7.

The Court indicated in open court, prior to the filing of the Ventre proposed Amended Intervenor Complaint that it would not consider enforcement of the Second Circuit Order to be a proper subject of these actions. Counsel apparently continues to assert it as a rough means of setting forth what the Larkin submission alleges in its Third Claim for Relief, see text accompanying note 5.

the relief stage of these proceedings. At the same conference, each represented that his proposed role would be minor during any hearing. Also, each responded to the Court's expressed desire to minimize further complication of an already complicated matter, with assurances that he did not intend to assert any new causes of action. With those assurances, each group has been permitted to participate informally in prehearing proceedings pending determination of these motions. Each was later informed that the Court would permit intervention, but that questions of status and possible conditions remained to be decided. This memorandum and order undertakes to formalize the intervention and to resolve the remaining questions.

The Court has concluded that each group satisfies the requirements of intervention of right, under Fed.R.Civ.P. 24(a)(2), with respect to the narrow question of relief to be granted should the plaintiffs prevail after a hearing and/or trial of the main actions. Their job status may very well be at stake here. Such an economic interest is sufficient under the Rule. See, Cascade Natural Gas Corp. v. El Paso, 386 U.S. 129 (1967). Cf. Smuch v. Hobson, 408 F.2d 175 (D.C. Cir. 1969). It is equally clear that the proposed intervenors, situated as they are on the "Regular Extra" lists,

are so situated that the disposition of the actions may as a practical matter impair or impede their ability to protect their interests. Finally, in this Court's view, no party could be expected to adequately protect their position on this issue.

No other claim made by the intervenors in their proposed Complaints will be permitted in this action. These are discrimination actions brought under 42 U.S.C. §1981 and 42 U.S.C. §§2000e et seq. The intervenors have stated no basis to support an independent right to bring actions under these sections, and thus they may not intervene as to these claims. See Solien v. Miscellaneous Drivers & Helpers Union, 440 F.2d 124, 132 (8th Cir.), cert. denied, 403 U.S. 905 (1971); Reynolds v. Marlene Industries Corp., 250 F.Supp. 722, 724 (S.D.N.Y. 1966). To the extent that the intervenors' claims can be read more generally to parallel the main plaintiffs' attack on the present hiring system in the industry, these are matters which are already with the NLRB and the Second Circuit, or it can be fairly said that the intervenors' interest will be adequately represented by the plaintiffs in the liability stage of these actions.

Therefore, the two groups will be permitted to intervene in each of these two actions, but the scope of their intervention is limited to the issue of relief as set forth in the Larkin proposed Intervenor Complaint as the Third Claim for Relief. Reason would dictate that each be designated as a party defendant with respect to this issue. But, with due consideration for their adversion to such a designation and with due regard for Rocca v.

Thompson, 223 U.S. 453, 458 (1912), they will be designated simply as "intervenors." However, the proposed complaints as submitted are not acceptable and as a condition of intervention, each group shall file a new pleading setting forth the sole basis for which intervention is hereby granted.

Such pleading shall be filed by May 3, 1974.

SO ORDERED.

Dated: New York, New York

April 30, 1974

LAWRENCE W. PIERCE

U. S. D. J.

U.S. DISTRICT COURT

May 3 4 03 PH '74

5.0. OF N.Y. - M7

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JOHN R. PATTERSON, Individually and on behalf of all the persons similarly situated,

Plaintiff,

- against -

NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY (an unincorporated association); et al.,

Defendants.

UNITED STATES OF AMERICA,

INTERVENOR COMPLAINT

- against -

NEWSPAPER AND MAIL DELIVERS' UNION OF NEW YORK AND VICINITY, et al.,

CLASS ACTION

73 Civ. 3058

Defendants.

73-Civ. 4278

(LWP)

JAMES V. LARKIN, Individually and on behalf of all of the persons similarly situated,

Intervenor,

- against -

NEWSPAPER AND MAIL DELIVERES' UNION OF NEW YORK AND VICINITY (an unincorporated association); THE DAILY NEWS: PUBLISHERS' ASSOCIATION OF NEW YORK CITY; AND ADJUSTMENT BOARD ON HIRING PRACTICES (an unincporated association),

Defendants.

x

Intervenor, for his complaint, herein alleges, upon information and belief,

 The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by

93

- (a) 42 U.S.C. 2,000 3-2(j) prohibiting the implementation of quotas where there has been documentation of discrimination in employment.
- 2. Intervenor brings this action on his own behalf and on behalf of other persons similarly situated, pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. The class which Intervenor represents is composed of individuals who are listed in the daily extra employment "List 3" of the defendant, The Daily News (hereinafter called "News"), who has been discriminated against in connection with working conditions at the "News." The class is composed of "List 3" men who, but for the discriminatory practices more fully set forth hereafter, would have been eligible for membership in the Newspaper and Mail Deliverers' Union. All such members of the class has been, continue to be or might be adversely affected by the practices complained of herein. These are common questions of law and fact affecting the rights of the members of this class.
- 3. The class consisting of at least several hundred individuals is so numerous that joinder of all of them is impracticable.
- 4. Common relief against the defendants is sought on behalf of each member of the class and Intervenor's claim, and interests do not conflict with the intersts of any other class member.
- 5. The interest of the class is adequately represented by the within Intervenor.
- 6. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

- 7. This is a proceeding for declaratory judgment as to Intervenor's rights and for temporary, preliminary and permanent injunctive relief enjoining the defendants from maintaining a policy, practice, custom or usage of discrimination against Intervenor and other "List 3" men in their class because they are not members of the "Union" with respect to the compensation, terms, conditions and privileges of employment and otherwise discriminating against Intervenor and other "List 3" men in ways which deprive them of equal employment opportunities and adversely affect their status as employees or possible employees. This is also a proceeding for the determination of appropriate monetary and affirmative relief due plaintiffs and members of the class to redress the present and past economic injuries inflicted upon them by the defendants.
- 8. Intervenor, James V. Larkin, is a citizen of the United States residing in the City and County of New York.

 Intervenor is a qualified chauffeur. From on or about December 1970, he has attempted to obtain employment from the "News" as a chauffeur and to obtain membership in the Union.
- 9. The "News" is a corporation with its principal office in the State of New York and doing business in the City, County and State of New York. The "News" operates and maintains places of employment in and about New York City at which over twenty-five (25) persons have been employed for each working day in each calendar week in the years 1972 and 1973 in the publication and delivery of newspapers. The "News" is an employer within the meaning of 42 U.S.C. Sec. 2,000e(b) and is engaged in an industry affecting commerce and, accordingly, is subject to the provisions of 42 U.S.C. Sec. 1981.

- 10. The defendant, Publishers' Association of New York City, acts as agent for the "News" in negotiating collective bargaining agreements with the "Union".
- 11. The "Union" is an unincorporated association representing employees of defendant, "News," involved in the packaging and delivery of the "News'" products with respect to the terms and conditions and privileges of employment with said employers. "Union" is a labor organization within the meaning of 42 U.S.C. Sec. 2,000e(d) and (e), is engaged in an industry affecting commerce, has more than twenty-five (25) members.
- 12. The Adjustment Board on Hiring Practices is an unincorporated association which was established pursuant to an agreement by and between the "News" and the "Union;" its purpose being to resolve grievances which may arise under a Collective Bargaining Agreement (hereinafter called "Agreement") entered into by the defendant, Publishers' Association of New York City, and the "Union."
- 13. The "News" and the "Union", both individually and with the cooperation, complicity and full knowledge of each other's practices, have discriminated and continue to discriminate against plaintiff and the class he represents on the grounds of non-union affiliation. From on or about December, 1970, Intervenor has attempted:
 - (a) to obtain regular employment as a deliverer of the "News;" and
- (b) to obtain membership in the "Union;"
 but has been denied such position by acts, practices, policies
 and customs of discrimination which include, but are not limited
 to, the following:

- 14. The "News" and the "Union" entered into the "Agreement," pursuant to which persons seeking employment with the "News" for a job, the classification of which falls within the occupational coverage of the "Union," as defined in Section 2 of the "Agreement" (which classification includes the employment sought by the within Intervenor) are required, pursuant to Section 4 of the "Agreement," to participate in a "Shape" System.
- effect of perpetrating past discrimination against non-union employees and continuing discrimination against non-union employees by favoring "Union" members who have, or purport to have had, regular positions of employment (known as regular situations) in the industry regardless of job or industry seniority or qualification capabilities and experience over non-union members who have regularly sought employment and who are qualified, capable and experienced for positions with the "News." This aforementioned favoritism for "Union" members has the effect of and is intended to perpetrate and cause continued discrimination against non-union individuals by reason of a practice pursuant to which the "Union," through nepostistic practices, discriminates in favor of "Union" members in the granting of "Union" membership.
- 16. This discrimination is practiced by requiring persons seeking membership in the "Union" to first obtain a regular situation, for thirty (30) days with any company employing persons engaged in the occupational category covered by the "Agreement." The referral of prospective employees and the hiring of the same for regular situation positions are controlled and influenced by the "Union" via other collective bargaining agreements and otherwise in an arbitrary and discriminatory manner against individuals such that regular situations are made available predominantly to persons in a nepotistic relationship

to members of the "Union."

- 17. "Union" membership has also been denied to intervenor and to other "List 3" men by the "Union" under the guise of procedures authorizing "father and son" exceptions, hardship membership, and organization membership for employees of the "Union." These provisions are available only to relatives and friends of "Union" members. Accordingly, these provisions have the effect and are intended to perpetrate the nepotistic character of the "Union" memberships.
- Adjustment Board comprised of representatives of the "Union" and of the "News." The Adjustment Board arbitrarily engages in practices of conduct which discriminate against Intervenor and his class in connection with work assignments, maintenance of lists of employees and other enforcement of Shape System requirements.
- 19. With respect to each count set forth in this
 Complaint, Intervenor and the class he represents have no
 plain, adequate or complete remedy at law to redress the wrongs
 alleged herein. This action, seeking a declaratory judgment,
 temporary, preliminary and permanent injunctions calling a halt
 to the practices alleged herein, and an accounting to redress
 past wrongs, is their only means of securing adequate or complete
 relief. Unless defendant is enjoined, the class Intervenor
 represents and each member thereof will continue to suffer
 irreparable injury from defendant's policies, practices, customs
 and usages set forth herein.

AS AND FOR A FIRST CLAIM FOR RELIEF

20. Intervenor repeats and realleges each and every allegation contained in Paragraphs one through nineteen of this Complaint with the same force and effect as if set forth at length

herein. By reason of the acts and allegations in Paragraphs one through nineteen of this Complaint and the pattern, practices, customs and usages of said acts, the "Union" is in violation of 42 U.S.C. Sec. 2,000e et seq. The Intervenor should not be subject to the penalty of quotas preferences as a remedy in that it would be in violation of 42 U.S.C. Sec. 2000e (2)(j).

WHEREFORE, the Intervenor respectfully prays with respect to the claim for relief that this Court:

- 1. Issue a preliminary and permanent injunction requiring the defendants and each of them to cease discrimination against the Intervenor and members of the class he represents, and
- (a) in furtherance of this injunction, enter a decree requiring defendants to conform to the terms of a Plan to submit such a Plan in form suitable for entry of judgment herein, which Plan shall include affirmative measures such as:
 - (i) access to membership in the "Union;"
 - (ii) merging of the 1 and 3 Lists in accordance with seniority.
 - (iii) allocation and availability of regular situations;
 - (iv) allocation of work assignments; and
 - (v) equal pay of salaries and wages.
- 2. With respect to the "News", an order to pya to the Intervenor and his class back pay for the deprivation of their rights to equal employment including but not limited to wages lost for failure to allow Intervenor and his class to work for the "News" and for failure to pay the Intervenor and his class the same rate of pay as is paid to "Union" members.
- 3. Award Intervenor cost and attorneys' fees accrued in the prosecution of this case.

7- A-76

4. Award Intervenor such other and further relief as to this Court may seem just and proper.

Dated: New York, New York May 3, 1974.

Herman H. Tarnow, Esq. 663 Fifth Avenue

New York, New York 10022 (212) 355-3977 Attorney for Intervenor

STATE OF NEW YORK) ss.:

HERMAN H. TARNOW, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 251 E. 32nd Street, N.Y.C.

That on the 3rd day of May, 1974 deponent served the within Intervenor Complaint upon the following attorneys in this action, at the corresponding addresses, which addresses are designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office - official depository under the exclusive care and custody of the United STates post office department within the State of New York.

Sworn to before me this day of May, 1974.

NOTARY PUBLIC STATE OF N.Y.
No. 41-4514888

Qualified in Queens County Commission Expires 3/30/75

PAUL J. CURRAN by JOHN F. McHUGH Attorneys for Plaintiff in 73 Civ. 4278

Department of Justice New York, New York

WILLKIE, FARR & GALLAGHER Attorneys for Plaintiff in 73 Civ.4278

O'DONNELL & SCHWARTZ Attorneys for Defendant Newspaper and Mail Deliverers' Union of N.Y. & Vicinity

TOWNLEY, UPDIKE, CARTER & RODGERS Attorneys for Defendants
New York News, Inc., Publishers'
Association of N.Y.C. and
Adjustment Board on Hiring
Practices

JOHN J. STANTON, JR. Attorney for Defendant The New York Times

SIDNEY ORENSTEIN, ESQ. Attorney for Defendant New York POst Corp.

SABIN, BERMANT & BLAU
Attorneys for Defendants
The Long Island Press,
Newark Morning Ledger Co., Inc.
and The Evening Journal Assoc.

1 Chase Manhattan Plaza New York, N.Y. 10005

501 Fifth Avenue New York, N.Y. 10017

220 E. 42nd Street New York, N.Y. 10017

229 W. 43rd St. New York, N.Y. 10036

551 5th Avenue New York, N.Y. 10017

350 Madison Avenue New York, N.Y. 10017 STROOK, STROOK & LAVAN Attorneys for Defendant Amsterdam News Co.

BANDLER & KASS Attorneys for Defendants: Bay City News Co., Boro Park News Delivery Co., Inc. Brodsky News Inc. Crescent News Distributors, Inc. Flushing News Co. Gaynor News Co. Hackensack News Co. Hudson County News Co. Jersey Coast News Co. Long Island News Corp. Merit Newspaper Service Corp. Newark Newsdealers Supply Co. New Brunswick Newsdealers Co. Passaic County News Co. S. Rachles Newsdealers Co. Rockland News-Dealers, Standard News Co. Union County Newsdealers Supply Co Woodhaven News Agency

SATTERLEE & STEPHENS
Attorneys for Defendant
Fairchild Publications Inc.

FRIEDLANDER, GAINS, RUTTENBERG & GOETZ Attorneys for Defendants Brownsville News Co. Kings County Delivery Ridgewood News Co. Weinberg News Co.

ANDERSON, RUSSELL &

Attorneys for Defendants Bronx County News Co. Lang News Co. and Metropolitan News

J. DONALD HIGGINS
Attorney for Defendant
East Island News Co. Inc.

SIDNEY A FLOREA Attorney for Defendant Manhattan News Co.

FINE TOFEL & SAXL Attorneys for Defendant El Diario Publishing Co.

PATTERSON, BELKNAP & WEBB Attorneys for Defendant Dow Jones & Co., Inc. 61 Broadway New York, N.Y.

605 Third Avenue New York, N.Y.10022

277 Park Avenue New York, N.Y. 10017

1140 Sixth Avenue New York, N.Y.

600 Fifth Avenue New York, N.Y.

109 S. Tyson St. Fioral Park, N.Y. 11001

100 E. 42nd St. New York, N.Y .10017

919 Third Avenue New York, N.Y. 10022

30 Rockefeller Plaza New York, N.Y.

:::rm3 13-2588 11-319

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JOHN R. PATTERSON, et al.,

Plaintiffs.

NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY, et al.,

Defendants.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff ,

NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY.

et al.,

Defendants.

JAMES LARKIN, DOMINICK VENTRE, FRANK CHILLEMI, GERALD KATZ, et al.,

Intervenors.

Upon the consent of the parties, endorsed hereon by their attorneys, and upon the Settlement Agreement between the parties, dated June 27, 1974, and attached hereto as Exhibit A, and upon this Court's Memorandum Opinion and Order approving the Settlement Agreement, dated September 19, 1974, and upon this Court's Supplemental Opinion and Order, dated October 11, 1974, appointing William S. Ellis, Esq., as the Administrator, it is hereby

FILED OCT 25 1974 S. D. OF N. FINAL ORDER AND JUDGMENT

DISTAICT

73 Civ. 3058

73 Civ. 4278

vi::nlc /!-//b8 n-319

ORDERED, ADJUDGED AND DECREED:

with .

- 1. The Settlement Agreement is hereby approved as a basis for settlement of these actions and the defendants in these actions, including those in default, are hereby directed to implement and perform the Settlement Agreement in accordance with its terms and with the provisions of this Order and Judgment.
- 2. Failure to comply with this Order and Judgment, including breach of the Settlement Agreement, shall be punishable as a contempt of court.
- 3. A copy of the Settlement Agreement and of this Order and Judgment shall be kept available and displayed by all defendant employers in a prominent place where notices to their delivery department employees are usually posted and by defendant union in a prominent place at the union's offices.
- 4. This Order and Judgment and the Settlement Agreement shall be binding upon plaintiffs and all members of the class or classes they represent, and defendants and their officers, agents, servants, employees, assigns, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
- 5. William S. Ellis, Esq., is hereby appointed as the Administrator under the Settlement Agreement, and he shall be compensated at an hourly rate of \$65.00 plus expenses.
- 6. This Court's temporary restraining order of March 19, 1974, extended by consent of the parties on April 5, 1974, until the entry of this final order, is dissolved as of the effective date of this Final Order and Judgment.
- 7. These actions are hereby marked "settled," with prejudice and the Court hereby retains continuing jurisdiction over these actions for the purpose of the enforcement of compliance with this Order and Judgment and the Settlement Agreement and the punishment of violations thereof, and for the

-2-

MD:rms 73-2558 n-319

purpose of enabling any of the parties to apply to the Court for such further orders and directions as may be necessary or appropriate.

8. This Order and Judgment shall take effect on November 11, 1974, and any application to the United States District Court for a stay thereof shall be made not later than October 27, 1974, at 42:00 o'clock 2.7.

Dated: New York, New York

October 24 ,1974.

United States District Judge

Consented to:

PAUL J. CURRAN United States Attorney for the Southern District of New York Attorney for Equal Employment Opportunity Commission, Plaintiff in 73 Civ. 4278

By:

MICHAEL S. DEVORKIN Assistant United States Attorney U.S. Courthouse Foley Square

New York, New York 10007

WILLKIE, FARR & GALLAGHE

One Chase Manhattan Ba New York, New York

DEBORAH GREENBERG 10 Columbus Circle

New York, New York 10019

Attorneys for Plaintiffs in 73 Civ. 3058

-3-

A-82

: 17.13 .-.19

O'DONNEIL SCHWARTZ

Attorneys for Defendant NMDU

A Hember of the Firm

501 Fifth Avenue New York, New York 10017

TOWNLEY, UPDIKE, CARTER & ROGERS Attorneys for Defendant New York News, Inc.

A Tember of the Firm 22) East 42nd Street New York, New York 10017

JOHN J. STANTON, JR., ESQ.
Attorney for Defendant New York Times Co.
229 West 43rd Street
Wew York, New York 10036

SIDNEY ORENSTEIN, ESQ.

Attorney for Defendant New York Post Corp 551 Fifth Avenue

New York, New York 10017

SABIN, BERMANT, & BLAU Attorneys for Defendants Long Island Press Publishing Co. and Evening Journal Assocation, and Newark Morning Ledger Co.

A Member of the Firm 350 Madison Avenue

New York, New York

A-83

MD:rms 73-2558 n-319 BANDLER & KASS
Attorneys for Defendants Bay City News Co.,
Brodsky News, Inc., Crescent News Distributors
Inc., Flushing News Co., Gaynor News Co.,
Nackensack News Co., Hudson County News Co.,
Jersey Coast News Co., Long Island News Corp.,
Newark Newsdealers Supply Co., New Brunswick
Newsdealers Co., Passaic County News Co.,
S. Rachles Newsdealers, Rockland Newsdealers
Standard News Co., and Union County Newsdealers
Supply Co., Boro Park News Co., and Merit News Co., Inc.

y: A Member of the Firm 605 Third Avenue

New York, New York 10022

ROSENMAN, COLIN, KAYE, PETSCHEK,
FREUND & EMIL
Attorneys for Defendants Bronx County News Co., Brownsville
News Company Inc.
Kings County Delivery, Lang News Co.,
Metropolitan News Co., Ridgewood News Co. Weinberg News Co.,
and Woodhaven News Agency

By: Noter't Justerner

M Moniter of the Firm

575 Madistr Avenue
New York, New York 10022

WILFRED L. DAVIS AND STEPHEN DAVIS Attorneys for Brooklyn News Co., Imperial News Co. and T & T News Co.

By:

A Member of the Firm 250 Broadway New York, New York

-5- A-84

10:res 73-2558 n-319

STROOK & STROOK & LAVA!!
Attorney for Defendant Amsterdam Hows Co.

B. A Hember of the Firm

61 Broadway New York, New York

PATTERSON, BELKHAP & WEBB
Attorneys for Defendant Dow Jones & Company, Inc.

By: A. Koke t Know.

A Hember of the Firm
30 Rockefeller Plaza
New York, New York, 10020

SATTERLEE & STEPHENS
Attorneys for Defendant Fairchild Publication, Inc.

A Hember of the Firm 277 Park Avenue New York, New York 10017

J. DONALD HIGGINS, KSO.
Attorney for Defendant East Island News Co.
109 S. Tyson Street
Floral Park, New York 11001

FINE, TOFEL & SAXL Attorneys for Defendant El Diario Publishing Co.

By: A Hember of the Firm
919 Third Avenue
New York, New York 10022

-6-

A-85

ID: ras
73-2558
n-319
PAESIDEM OF

ASHE AND RIPKIN
Attorney for defendant The Forward Association, Inc.
(Sued as Jewish Daily Forward)

By:
Alember of the Firm
253 Broadway
New York, New York

A-86

MD:1m

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK . JOHN R. PATTERSON, et al, Plaintiffs, -against-: 73 Civ. 3058 (LWP) NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY, et al., Defendants. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, : Plaintiff, -against-73 Civ. 4278 (LWP) NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY, et al., Defendants. DOMINICK VENTRE, FRANK CHILLEMI, GERALD KATZ, et al., Intervenors. JAMES V. LARKIN, Individually and on be- : half of all of the persons similarly stfuated, Intervenors.

SETTLEMENT AGREEMENT

WHEREAS, the parties to these actions have agreed to the entry, upon this Court's approval, of a final Order adopting the provisions of this Settlement Agreement (hereinafter referred to as the "Order"), without admission by any defendant of a violation of Title VII of the Civil Rights Act of 1964 or of 42 U.S.C. §1981, and without any finding by this Court that any defendant has discriminated against any person or persons because of race, color or national origin:

WHEREAS, there is, and has been at all times relevant herein, a statistical imbalance of minority individuals (i.e., all those persons defined by the Equal Employment Opportunity Commission as Black, Spanish—surnamed, Oriental and American-Indian), employed in the delivery departments of the defendant employers within the bargaining units represented by defendant NMDU and a corresponding statistical imbalance of NMDU members;

WHEREAS, the relief provided by this Settlement Agreement is designed to correct the aforesaid statistical imbalance, to remedy and eradicate its effects, and to put minority individuals in the positions they would have occupied had the aforesaid statistical imbalance not existed;

IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

A. EQUITABLE RELIEF

 Subject to the provisions herein, defendant Newspaper and Mail Deliverers' Union of New York and Vicinity ("NMDU"), its

-1A-

A-88

officers, agents, employees and successors, and all persons in active concert or participation with them, will be permanently enjoined from engaging in any act or practice which has the purpose or the effect of discriminating against any individual or class of individuals on the basis of race, color or national origin. They shall not exclude or expel from union membership, or limit, segregate or classify union membership on the basis of race, color or national origin, nor shall they take any action which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment because of such individual's race, color or national origin. They shall receive and process applications for membership, admit members, handle grievances and otherwise administer all of the affairs of NMDU so as to ensure that no individual represented by it is excluded from equal work opportunities, including overtime and advancement, on the basis of race, color or national origin.

2. Subject to the provisions herein, defendant employers, their officers, agents, employees and successors, and all persons in active concert or participation with them, will be permanently enjoined from engaging in any act or practice which has the purpose or the effect of discriminating against any individual or class of individuals in their bargaining units represented by NMDU on the basis of race, color or national origin. They shall not fail or refuse to hire for employment any such individual on the basis of race, color or national origin, nor shall they take any other action which would deprive any such individual of equal employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment because of such individual's race, color or national origin.

B. THE ADMINISTRATOR

- 3. Vincent McDonnell, or such other person as the Court may designate, will be appointed by the Court as Administrator to implement the provisions of the Order and shall supervise its performance. He shall immediately commence his duties.
- 4. In addition to the powers specified herein, the Administrator shall be empoweded to take all actions (including the establishment of such additional recordkeeping and the employment of such mediators and fact finders) as he deems necessary to implement the provisions and to ensure the performance of the Order. The Administrator or his designce shall hear, and the Administrator shall determine, all complaints that any individual in the bargaining units in the industry represented by NMDU has been allegedly denied equal employment opportunities on the basis of race, color or national origin and the Administrator shall also decide any questions of interpretation and claims of violation of the Order by any party or by any such individual employee or applicant for employment, acting either on his own initiative or at the request of any interested person or party. All decisions of the Administrator shall be in writing and shall be served upon the parties hereto and the complainant. Such decisions shall take effect within five (5) days after the date thereof unless a notice of intention to review has been filed with the Administrator. If such timely objection is made, any party to that proceeding or to these actions may bring such decision before the Court for review, provided, however, that the conditions prevailing as of the date of the Administrator's decision shall be maintained until further order of the Court.

Nothing contained herein shall give the Administrator the right to amend, modify or change the substantive terms of the

-3- A-90

Order nor shall he have any power or authority other than that granted to him hereunder, except as approved by the Court.

- 5. The compensation (at a rate not to exceed \$
 per hour) and expenses of the Administrator shall be fixed by
 the Court and shall be charged upon each of the defendants
 herein as the Court may direct, or, if the Administrator shall
 find a claim to be frivolous, upon such persons whom he deems
 appropriate, taking into consideration the nature of the claim
 and other relevant circumstances.
- 6. The Administrator designated by the Court shall remain in office for an initial period of five (5) years after the date of entry of the Order (unless a successor Administrator is designated by the Court for the remainder of that five (5)-year period) and he or his successor thereafter shall remain in office if and for such time as the Court may direct.

C. AFFIRMATIVE ACTION PROGRAM

7. The defendants shall institute the following affirmative action program upon the date of entry of the Order or upon such earlier date as shall be agreed upon by the parties. Such program is designed so that a sufficient number of minority workers, who are defined by the Equal Employment Opportunity Commission as Black, Spanish-surnamed, Oriental and American-Indian workers, will be employed by the defendant employers (and accepted for membership by NMDU as provided herein) within the bargaining units in the industry represented by NMDU in order to achieve a minimum goal of 25% minority employment in the industry within said bargaining units by June 1, 1979 (hereafter the "Goal"). The Administrator may set minimum annual industry employment goals or goals for particular defendant employers, if he deems such necessary to achieve the Goal and shall take

whatever steps necessary to implement the Goal and the "new hiring" procedure set forth in paragraph 15 below including, but not limited to, referring applicants, minorities or otherwise, to vacancies at any employer. Defendants shall submit reports to the Administrator as may be requested by the Administrator indicating progress towards compliance with the Goal. Failure to submit such reports shall be a violation of the Order and shall subject such defendant to appropriate civil or criminal contempt sanctions.

For the purposes of this paragraph 7, (a) "employment" refers to employment of individuals as regular situation holders or as persons listed on a Group I list, unless the Administrator, subject to review by the Court, shall determine that a different standard shall be used, and (b) "industry" means the defendant employers and their successors and assigns. Defendant employers operating less than seven days per week will have their total employees and minority employees proportionately reduced in determining if the Goal is achieved.

- 8. The Goal is not an inflexible quota but an objective to be achieved by the mobilization of available personnel and resources of the defendants hereto in a good faith effort to maximize employment opportunities for minorities in the bargaining units in the industry represented by NMDU.
- 9. To achieve the Goal, the affirmative action program shall be implemented in accordance with all of the following provisions of the Order, except as modified by the Administrator with the approval of the Court:
 - (a) Upon entry of the Order, and subject to subparagraph 9(b) below, (i) all minority persons employed on a defendant employer's group III list as of the date

of entry of the Order shall be placed on the bottom of the Group I list of such employer and (ii) with respect to the News, at the same time, an equal number of non-minority persons employed on its Group III list as of said date shall be placed on the bottom of the News Group I list immediately following the individuals described in (i) above who are placed on the News Group I list.

- (b) (i) The named Plaintiff John R. Patterson shall be offered a regular situation at The New York Times Company within ten (10) days of entry of the Order;
 - (ii) The named Plaintiff Roland J. Broussard shall be offered a regular situation at New York News, Inc. within ten (10) days of entry of the Order;
 - (iii) The named Plaintiff Elmer Stevenson shall be added to the New York News Group I list along with the persons described in subparagraph 9(a)(i) above upon the entry of the Order;
 - (iv) Gerald Iacovone shall be offered the next situation available at Lang News Company;
 - (v) The individuals named in subparagraph 9(b)(i) and (ii) above shall have such seniority listing among any other individuals becoming regular situation holders at the respective companies at or about the same time as is determined by their drawing by lot;

(vi) The New York Post shall add nine (9) persons to the bottom of its Group I list (consisting of six (6) minorities and three (3) others designated by it) within ten (10) days of entry of the Order;

(vii) All persons added to a Group I list pursuant to this paragraph 9 shall receive the higher rate of pay specified in the applicable collective bargaining agreement for all shifts worked on or after the date of such listing.

10(a) The senior non-minority persons selected to go onto any defendant employer's Group I list from its Group III list, if any, pursuant to subparagraph 9(a)(ii) above and paragraphs 11, 12, 18(b) and 22 below, shall be selected on the basis of shop seniority (i.e., their Group III priority listing).

(b) The News Group III list shall be revised as of January 1, 1976, effective February 15, 1976 (in addition to revisions for failure to meet stipulated work/shape requirements). This revision shall be made as follows: all employees who work more than one hundred and eighty (180) shifts during calendar year 1975 will appear on such revised Group III list first, in their pre-revision order, and, following them, all other Group III employees, also in their pre-revision order. For this 1976 revision, shifts worked for any defendant employer other than The News shall be counted towards the foregoing requirements. The News Group III list shall be revised again as of April 1st of each calendar

following this revision while the Order is in effect based upon the preceding calendar year's work at the News.

- (c) Whenever a regular situation is filled after subparagraph 9(a) has been complied with, such situation shall be offered to the senior employee listed on the employer's Group I list.
- (d) Any persons listed on the News Group III list as of the date of entry of the Order shall, during calendar years 1974 and 1975, be required to work at least one hundred and twenty (120) shifts for the News to retain their Group III listing. The contract's Group III shape/work requirements will be in addition to this special work requirement. Persons not meeting these two requirements shall be delisted as of February 1st of the succeeding calendar year. Employees claiming a legitimate reason for not satisfying this requirement, including, but not limited to, a claim that there were not sufficient work opportuniites available, shall file such claim pursuant to the grievance-arbitration provisions of the applicable labor contract by February 17th of the succeeding calendar year with a right of appeal to the Impartial Chairman who shall have authority to determine the question.

11. Except as provided in paragraphs 12 and 13 below, when a defendant employer fills a regular situation, it shall simultaneously (a) move one (1) person to the bottom of its Group I list and (b) add one (1) person to the bottom of its Group III list, if available at that time. If there are no such persons available at that time to be hired pursuant to the "new hiring" procedure of paragraph 15 below, such employer shall make a good faith effort to find such persons for hiring hereunder. If any defendant decides not to add any person to the bottom of its Group III list, it shall promptly notify the Administrator, in writing under oath, of its intention, the reasons for its action and any rulings or proceedings by arbitrators or other tribunals relating thereto. Subsequent additions to such list shall be in accordance with paragraph 15 below. Any false statements or the failure to submit such notices shall be a violation of the Order and shall subject such employer to appropriate civil and criminal contempt sanctions.

The person in subparagraph 11(a) shall, except as provided in subparagraph 18(b) and paragraphs 12 and 22 below, be selected by offering the position to the senior non-minority person on the Group III list and to the senior minority person on that Group III list alternately. Persons added pursuant to subparagraphs 9(a) and 9(b)(iii) above shall not affect the operation of this paragraph, and each addition to the Group I list after the addition of such persons shall be on such one-to-one basis. The person in subparagraph 11(b) shall be selected

in accordance with the "new hiring" procedure set forth in paragraph 15 below.

Any employee added to a defendant employer's Group I list on or after the date of entry of the Order, (other than those added pursuant to subparagraphs 9(a), 9(b) (iii) or 9(b) (vi) above or laid-off persons added pursuant to paragraph 18 below) (i) shall continue to receive whatever rate of pay (higher or lower) he was then receiving if on the Group III list (or, if not added from a Group III list, the rate of pay paid to an employee upon his first day of shaping on such Group III list), (ii) shall thereafter receive the higher rate of pay only beginning on the first working day of the calendar month following the calendar month in which such person has worked at least one hundred and eighty (180) days for the employer and not before and (iii) shall thereafter receive the higher rate of pay for all shifts worked for the employer once he first becomes entitled to said higher rate under this paragraph unless and until April 1st of any calendar year, in which he has worked less than one hundred and eighty (180) shifts for the employer during the immediately preceding calendar year in which event he shall receive the lower rate of pay for all shifts worked on or after said date until the next succeeding April 1st. Any person becoming a regular situation holder shall receive the higher rate of pay for all shifts worked thereafter. If the 180-day provision presently contained in the collective bargaining agreements between the defendant employers and NMDU is modified, an appropriate change will be made in the foregoing provision.

12. The provisions of subparagraph 11(a) shall be suspended temporarily for New York News, Inc. which shall instead, for the first such regular situation filled, move two (2) persons to the bottom of its Group I list by offering those

positions to the senior non-minority employee on its Group III list and to the senior minority employee on that list together (not alternatively). Persons added under subparagraphs 9(a) and 9(b)(iii) will not be counted towards the requirements of this subparagraph. This proce ontinue until there are oup I list. At that one hundred (100) persons on t. point, the process will be reversed so that, for each two (2) regular situations filled thereafter, one (1) person will be moved to the bottom of the News Group I list consisting of the senior minority person on its Group III list and the senior non-minority person on said list, alternately until there are again forty-one (41) persons on the News Group I list or until December 31, 1976, whichever date occurs first. For any regular situations filled thereafter, all provisions of paragraph 11 shall apply.

- *13. The provisions of subparagraph 11(a) shall be suspended temporarily for the New York Post until there are again thirty-nine (39) persons on the Post Group I list at which point subparagraph 11(a) shall become operative.
- 14. After subparagraph 9(a) is put into effect, the positions previously occupied by those particular individuals therein shall be occupied once by other minority persons. After this "sprinkling" process is completed, new minority employees shall thereafter be added to Group III only at the bottom.
- 15. Defendant employers shall offer positions available (whether pursuant to paragraph 11 or otherwise) on their Group III list on the basis of three (3) minority employees for every two (2) other employees. If such employers do not maintain a Group III list, they shall offer positions available at their lowest entry level position, whether a Group I list, regular situations or otherwise, on such three-to-two basis. This may be

accomplished in any order so long as the aforesaid basis is maintained (a) for every five (5) employees added or (b) for all employees added within each calendar month during the life of this decree. As long as this basis is maintained, preference for listing on an employer's Group III list shall be given to those persons who are otherwise qualified and competent and who are (or who have been) employed by said employer (or by contractors employed by said employer) and who express an interest in and apply for Group III listing. With respect to the News and the Times, the "sprinkling' process described in paragraph 14 above shall apply so that those minorities employed on each such defendant's Group IV list as of the date of entry of the Order are offered Group III listing. The shape/work requirements of the NMDU collective bargaining agreement shall apply, except that employees who are first listed on a defendant employer's Group III list (or Group I list if there is no Group III list) after the date of entry of the Order must shape only three (3) shifts per week or work three (3) shifts per week during their first six (6) months on such list to retain their listing. During said six (6) month period, the employer may delist, after notification to the Administrator, any employee who fails to shape in a good faith effort on those specific shifts where work opportunities exist,

16. The Administrator is authorized and empowered to investigate the work opportunities available to persons on a Group III list and to issue any orders he may deem appropriate including, but not limited to, changing the shape requirements set forth, expanding or contracting such list and suspending for a reasonable period the requirements in subparagraph 11(b) and paragraph 15 above that additions be made to such list. In addition, any Group III person who has been shaping regularly (i.e. working 5 shifts or shaping 6 shifts each week) but who has

not received at least forty-five (45) shifts of work in any calendar quarter shall obtain from the Adjustment Board on Hiring Practices (or such other or additional central office or offices as Administrator may direct) a list of available work opportunities in the industry. If such situation continues during the next succeeding calendar quarter, he may then apply to the Administrator who is authorized and empowered to devise a plan to assure that existing work opportunities shall be made available to the applicant.

Defendants shall create a procedure whereby work opportunity information shall be made available to such persons.

17. The objective of the Order is to provide daily and long term work opportunities for minorities. If the Administrator determines that unusual "ballooning" or other abuses of the Group II list published by the Adjustment Board have adversely affected this objective, he may recommend appropriate revision of the functioning of the Group II list. Monthly reports similar to the weekly reports required by this Court's order of March 19, 1974 shall be submitted to the Administrator and to the parties until such time as the administrator shall determine. False statements therein and the failure to submit such reports shall be a violation of the Order and shall subject such employer to appropriate civil or criminal contempt sanctions. The final two sentences of paragraph 31 below shall apply to any recommendations made by the Administrator hereunder.

18(a) After the entry date of the Order, individuals who are employed by a defendant employer may, except as otherwise provided herein, be added to any other defendant employer's Group I list only if (a) they have lost their regular situation elsewhere in the industry by reason of lay-off for economic or business reasons or through merger, consolidation or permanent suspension of the newspaper or company at which they were employed.

GPO: 1972 0 - 474-479

4-100

(b) the Administrator has certified that such layoff or merger, consolidation or permanent suspension is legitimate and (c) the Administrator has determined that such additions to said Group I list will not significantly affect or delay achieving the Goal or significantly affect or delay any other provisions of the Order designed to maximize employment opportunities for minorities (including, but not limited to, the attainment of regular situations and Group I status). The provisions of subparagraph 18(b)(1), (ii) and (iii) shall apply after any additions to the Group I list pursuant to this subparagraph. The Administrator shall require a statement under oath from any defendant employer that the particular layoff, merger, consolidation or permanent suspension is legitimate and necessarily involves the individual or individuals in question. False statements or failure to submit such statements shall be a violation of this Order and shall subject such employer to appropriate civil or criminal contempt sanctions.

Any defendant employer which intends to reduce its work force and which reduction would have a consequent effect on overall work opportunities for its employees other than regular situation holders shall give the administrator two (2) weeks' notice prior to the effective date of the lay-off. In such event, the Administrator shall review the effect of the lay-off on work opportunities for employees other than regular situation holders and he is authorized and empowered to take any action he deems necessary and proper to develop procedures to maintain the pre-lay-off ratio of minority non-regular situation

holder job opportunities to overall non-regular situation holder job opportunities at that company or in the industry. The reduction of regular situations shall be governed by the NMDU contract.

- (b) The Administrator shall also be authorized and empowered to reassign any regular situation holders who may be laid off for economic or business reasons to the top of the Group I list at the defendant employer by which they were so laid off. If the Administrator determines there is insufficient work available for such persons at said employer, such persons, except as otherwise provided herein, may thereafter be added to the bottom of a Group I list at any other defendant employer in the industry they may choose, provided, however, that (i) one (1) minority employee is added to said Group I list, according to the terms of the Order, for each such non-minority laid-off person added and one (1) non-minority employee is added for each such minority laid-off person added, (ii) if in any calendar year, ten (10) or more such nonminority laid-off persons are added to the Group I list at either the Times, News or Post, an equal number of nonminority persons from that employer's Group III list shall be added to said Group I list, according to the terms of the Order, in alternating positions with the minority persons added pursuant to (i) above, and (iii) in both cases the requirements of subparagraph 11(a) above shall be suspended for such employer until the total number of persons on its Group I list again reaches the number on that list on the date immediately preceding the date on which the first such addition is made,
- 19. No grounds for transfer to another employer's
 Group I list (other than those grounds listed in paragraph 18)
 will be recognized after the date of entry of the Order.

- 20. After the entry date of the Order, NMDU shall offer membership to any individual who is or will be listed on any defendant employer's Group I list on the same terms and conditions (including installment payment of initiation fees) generally applicable to other members.
- 21. Any defendant employer that does not have a formal Group III list as of the date of entry of the Order and which employs twenty (20) or more persons within the jurisdiction of NMDU shall establish a Group III list which shall include all persons recruited into the industry and hired by it subsequent to the entry date of the Order. Said employers shall determine the number of workers on their Group III list and use their best efforts to correlate said number with the available work. To remain eligible for continued listing on such new Group III lists, each employee will be required to shape or work at least three (3) shifts a week unless the Administrator determines a lesser number is appropriate in view of the lack of work opportunities. All other defendant employers which employ less than twenty (20) persons within MDU's jurisdiction shall use their best efforts to hire employees so as to meet the Goal and shall submit reports in writing under oath to the Administrator at least every six (6) months (or such other period as the Administrator may designate) concerning these efforts. False statements or ailure to submit such reports shall constitute a violation f the Order and shall subject each such employer to appropriate civil or criminal contempt sanctions.
- 22. Notwithstanding the first four sentences of paragraph 11 above, a defendant employer subject to paragraph 21 above shall, when it fills a regular situation, move one (1) person to the bottom of its Group I list from its Group III list in the order in which such persons on said Group III list were hired. Replacement on the Group III list shall be discretionary,

it being the intent of this decree that sufficient persons shall be hired on the Group III list to fill vacancies created on that employer's Group I list.

- 23. The terms of the applicable collective bargaining agreements with respect to discharges will be enforced.
- 24. To the extent necessary to obtain applicants, defendants shall publicize in the minority media (and in such other media as the Administrator may require) the employment and union membership opportunities, the procedures for taking advantage of such opportunities and that defendants have a non-discriminatory himself policy. The text of the materials used for this publicity shall be furnished to the plaintiffs and the Administrator. Also, to the extent necessary to obtain applicants, defendants shall participate in career programs at local schools in minority areas.
- 25. The defendant employers shall revise their Group I and III lists at frequent intervals as changes are required hereunder (but not more often than every two (2) weeks) and each such list shall govern until superseded by a succeeding list.

 Defendant employers shall remove persons from their Group I and III lists who do not meet stipulated work/shape requirements.
- offer made hereunder need not be offered a subsequent position unless such person notifies the employer involved (at the time said offer is pending or thereafter) that he or she would like to receive notice of subsequent offers,
- 27. Shop seniority shall apply to persons covering situations vacant because of vacation, leave or similar reasons and there shall be no bumping on collection or premium (holiday, etc.) days.

D. GENERAL PROVISIONS

qualified individuals with assistance in obtaining and retaining employment and in meeting any requirements (e.g. chauffeur's license and physical examination) that may be imposed. A probationary period of reasonable length (not to exceed thirty (30) days) to determine competency shall apply to such individuals hired onto a Group III list after the date of entry of the Order. Within ten (10) days after the date of entry of the Order, the defendant employers shall submit to the Administrator any application forms and any job requirements for or affecting employees within the bargaining units represented by NMDU and the Administrator shall review such forms and requirements to ensure that they are job-related.

29. Defendants who have shape requirements shall maintain, at such central office or offices as the Administrator may determine, a register setting forth their reporting (shape) times for employees who are not regular situation holders. This register shall also contain the addresses and locations to which applicants should report, a concise summary of the reporting (shape) procedures and obligations, the names of the individual or individuals to contact and any further information the Administrator may deem appropriate. Applicants for employment with any defendant employer shall report to such office during normal business hours to complete applications for listing on the extra lists at a particular employer, and such applications shall be available only at such office or offices. The Administrator shall receive a monthly report concerning said applicants. Any applications for listing on a defendant employer's Group I list that have not been acted upon by the date of entry of the Order shall be declared null and void.

Order, the Administrator may require such additional reports as he deems necessary including reports indicating number of minority employees, earnings, layoffs, etc. Defendants will use their best efforts to make available to the Administrator, upon his request, all relevant records. Failure to submit such reports or false statements therein shall be a violation of this Order and shall subject such defendants to appropriate civil or criminal contempt sanctions. In addition, defendant employers shall post a summary of the provisions of the Order, in a form approved by the Administrator, along with the name, address and telephone number of the Administrator, in a prominent location wherever notices to delivery department employees are normally posted.

tion of the hiring and priority practices of the defendants in the bargaining units in the industry represented by NMDU. He shall prepare a report concerning this investigation which shall contain his recommendations, if any, for those steps to be taken by the defendants that he deems necessary to implement the provisions of the Order and to ensure the performance thereof. Such report and recommendations shall be submitted to the parties within one (1) year of the date of entry of the Order. The parties shall then have thirty (30) days to submit their comments, if any, to the Administrator, who shall review such comments and, within thirty (30) days thereafter, submit a final report to the Court. Any objections to said report shall be promptly resolved by the Court.

32. The investigation described in paragraph 31 above shall include, but need not be limited to, the following topics:

- A. potential problems, if any, arising out of

 (i) any unusual "ballooning" of the Group

 II list or alleged misuse of the privileges

 afforded to persons on this list, and (ii)

 the appropriate placement of persons in the

 bargaining units represented by NMDU laid

 off for valid economic reasons by the

 employers in the industry.
- B. the establishment and enforcement of effective procedures and requirements for determining whether individual employees should be removed from a Group III list or otherwise treated because of "second jobs" or similar considerations.
- C. what different rules or procedures, if any, should apply to the small publishers or wholesalers?
- D. the availability of regular situations and other jobs in the industry, the size of the work force and amount of overtime worked.
- E. a review of the need for the establishmen' of training programs to maximize employment opportunities for present and prospective employees.
- F. the establishment of qualifications to be used by the parties for determining the competency of employees and applicants.
- G. a review of promotional opportunities,

- H. a review of the terms and conditions of employment of Group III employees as compared to those of Group I and regular situation employees.
- 33. To the extent that the terms and provisions of the Order conflict with any existing or future collective bargaining agreement between NMDU and any employer, the terms and provisions of the Order shall prevail. Any terms and provisions of any collective bargaining agreements between NMDU and any defendant employer which have been suspended by operation of the Order may be put into effect when the Order terminates, unless this Court orders otherwise.
- 34. Plaintiffs will notify any affected defendants of any problems of non-compliance which they believe warrant investigation. The defendant or defendants involved shall promptly investigate the complaint and determine if appropriate corrective action should be taken. Promptly thereafter, defendants shall make a report concerning such complaint to the Administrator with a copy to plaintiffs.
- Adjustment Board on Hiring Practices after the date of entry of the Order shall be revised to ensure that only persons holding regular situations and Group I status in accordance with applicable contract requirements will be listed thereon. All defendants shall be required to report in writing to the Adjustment Board under oath and any false statements shall be a violation of the Order and shall subject such defendants to appropriate civil or criminal contempt sanctions. Defendants that do not file reports shall have their employees stricken from the Group II list after appropriate notice to NMDU and to the employer involved. Such

revised Group II lists shall be distributed by the Adjustment Board to all defendant employers and shall be kept available and displayed by them in a prominent place where notices to their delivery department employees are usually posted. Each such defendant employer shall pay any reasonable costs to the Adjustment Board for such distribution. The provisions of this subparagraph shall be specifically enforceable by any party in any forum. The revision procedure set forth herein shall apply to all succeeding revisions of such Group II list.

- (b) Any changes made in the New York Post Group I list or Group III list, if any, after the date of entry of the Order must be approved by the Adjustment Board established by the Publishers' Association-NMDU labor contract in accordance with that Board's procedures.
- (c) Any party hereto may file a claim with the Impartial Chairman that the requirements for listing as set forth in the applicable NMDU labor agreement have not been met as to any individual or individuals presently or subsequently employed by any defendant employer, and the Impartial Chairman shall have the authority to determine the question.
- provide for the payment to any present Group III minority employee of the pension and death benefits payable under the NMDU-Publishers' Pension Plan, as amended. This guarantee will apply where such individuals lack sufficient credited service, as defined by said Plan, as of the time they apply for benefits thereunder, for any full years actually worked for a Contributing Employer through and including 1973. Pension and death benefits received from any other employer shall be deducted and, if they exceed the benefits applied for, no payment shall be due

MD: emw

hereunder. If less than full benefits are payable to such individuals under the Plan because of insufficient years of credited service, through and including 1973; this guarantee shall operate so as to bring the total amount actually paid to the individual up to the amount of the full benefits applied for.

- 37(A). Defendants shall create a fund of \$110,000.00 (One Hundred and Ten Thousand dollars) which will, in turn, be divided into three separate funds, Fund "A", which will contain \$100,000, Fund "B", which will contain \$5,000 and Fund "C", which will contain \$5,000. The funds will be used to pay back-pay claims by minority individuals as follows:
 - 1. Fund "A" shall be used to provide back pay to named plaintiff Elmer Stevenson and to all eligible minority individuals employed on the Group III lists of defendants in 73 Civ. 3058 as of June 1, 1974, whose names appear in Appendix A hereof;
 - 2. Fund"B" shall be used to provide back pay to eligible minority individuals (a) who, as of June 1, 1974, have shaped regularly and continuously (i.e., three (3) or more times during each calendar week or, if on any such defendant's Group IV list, one (1) or more times during each calendar month) at defendants New York Times, New York News, New York Post or Long Island Press for a period of at least six (6) months but are not regular situation holders or on any such Group I or Group III as of said date or (b) had left the employment of, or were terminated by, such defendants on or after January 1, 1970 and were listed on a Group III or Group IV list or had shaped three (3) or more times during each calendar week for a period

MD:emw

of at least six (6) months at one of said defendants as of their termination of employment and who did not, after such termination, become regular situation holders or Group I or Category I employees at any other defendant employer as of June 1, 1974.

- 3. Fund "C" shall be used to provide back pay to minority individuals who (a) as of June 1, 1974 had shaped regularly and continuously (i.e., three (3) or more times during each calendar week) for a period of at least six (6) months at any defendant in 73 Civ. 4278 (other than New York Times, New York News, New York Post or Long Island Press), but were not regular situation holders or on any such defendant's Group I or Category I list as of said date, or (b) who, as of said date, had left the employment of, or were terminated by, any such defendant on or after January 1, 1970, and had met the requirements of 3(a) above as of their termination of employment and who, after such termination, did not become regular situation holders or Group I or Category I employees at any other defendant employer as of June 1, 1974.
- (B). Defendants shall, within fifteen (15) days after the date of entry of the Order, pay the following amounts into the funds described below:
 - 1. Fund "A" (a) \$33,500 by NMDU.
 - (b) \$33,500 by New York News, New York Times and New York Post, in equal amounts.
 - (c) \$1,000 each, by Amsterdam News,
 Bay City News, Brodsky News, Bronx County
 News, Brooklyn News, Crescent News, Dow
 Jones, East Island News, El Diario, Evening
 Journal, Fairchild, Flushing News, Gaynor
 News, Hackansack News, Hudson County News,

A-111

Imperial News, Jersey Coast News, Kings
County Delivery, Lang News, Long Island
News, Long Island Press, Manhattan News,
Metropolitan News, Newark Newsdealers,
New Brunswick Newsdealers, Passaic
County News, S. Rachles Newsdealers,
Rockland Newsdealers, Standard News,
T & T News, Union County Newsdealers,
Weinberg News and Woodhaven News.

- Fund "B" \$1,666.67 each, by New York News,
 New York Times and NMDU.
- Fund "C" \$147.06, each, by the defendants, named in 1(c) above and, also, New York Post.
- (C). The parties will hereafter confer and agree upon a formula for the distribution of Fund "A", which formula will be submitted to the Court for approval. The parties will apply that formula to compute the individual share for each class member who is to participate in Fund A, and will mail to each such member a Notice of Compromise and Settlement of Back Pay Claims appended to which will be a copy of the formula and a schedule setting forth the amount so computed as each individual's share. After said notice has been mailed, the Court may schedule a hearing on any statement of protest with respect to the proposed distribution of Fund A before a judgment in accordance therewith will be entered.
- (D). The Administrator designated by the Court shall, subject to Court approval, (1) establish a procedure whereby persons who may be eligible to participate in Funds B and C will be notified and will have an opportunity to present claims, and (2) determine the method of distribution of Funds B and C among eligible claimants after their execution of appropriate releases.

If the valid claims exceed the amount of fund B or C, distribution among eligible claimants shall be <u>pro rata</u>. Any balance remaining in Fund B after the payment of valid claims shall be returned to the defendants in proportion to their respective amounts to said fund. Any balance remaining in Fund C after the payment of valid claims shall be returned, in a similar proportion, to the other defendants making payments thereto.

38. Counsel fees and disbursements in the amount of \$67,000 shall be paid, within fifteen (15) days after the date of entry of the Order, to the plaintiffs' attorneys in 73 Civ. 3058 by New York News, New York Times, New York Post, Long Island Press and NMDU, in equal amounts.

39. The class represented by private plaintiffs in 73 Civ. 3058 shall include (a) all minority individuals employed on the Group III lists of the defendants New York Times and New York News as of June 1, 1974, (b) all minority individuals who, as of June 1, 1974, had shaped regularly and continuously (i.e. three (3) or more times during each calendar week or, if on any such defendant's Group IV list, one (1) or more times during each calendar month) at New York News, New York Times, New York Post or Long Island Press for a period of at least six (6) months but were not regular situation holders or on any such defendant's Group I or Group III lists as of said date and (c) all minority individuals who, as of June 1, 1974, had left the employment of, or were terminated by such defendants on or after January 1, 1970 and who were listed on a Group III or Group IV list or had shaped three (3) or more times during each calendar week for a period of at least six (6) months at one of said defendants as of their termination of employment. Members of said class, as known to such defendants, are listed in Appendix & hereof.

13

40(Λ). Counsel for defendants shall mail copies of this Court's Order scheduling a hearing on this Settlement Agreement, and this Settlement Agreement and other explanatory information to all members of the class of private plaintiffs listed in Appendix B on or before July 25, 1974. A list of the names and addresses of individuals to whom such materials have been sent will be furnished to counsel for plaintiffs in 73 Civ. 3058.

(B). A concise summary of this Settlement Agreement prepared by the parties will be published once a week for three (3) consecutive weeks beginning with the week of July 21, 1974 in the Amsterdam News, El Diario, New York News, New York Post, New York Times and Newark Morning Ledger. The text of the notice is set forth in Appendix C hereto. Defendants publishing such notice will pay the costs of publication thereof. A copy of the notice and the Settlement Agreement shall be kept available and displayed by all defendant employers in a prominent place where notices to their delivery department employees are usually posted at all times during the period from July 25, 1974 through and including August 27, 1974. The notice will expressly afford to members of the class of private plaintiffs, and to any minority persons who assert improper exclusion from the class by definition, an opportunity to file written objections to the Settlement Agreement with this Court no later than August 16, 1974. Promptly following the last such publication, defendants publishing such notice shall submit to the Court and to private plaintiffs' counsel a certificate attesting to said publication and the dates thereof, and shall submit therewith copies of the notice as published.

- 41. This Court shall retain jurisdiction over these actions to ensure compliance with the terms of the Order and to enter such additional orders as may be necessary to effectuate equal employment opportunities provided by the Court in the bargaining units in the industry represented by NMDU. Such additional orders may include, but need not be limited to, an injunction against any organization, person or persons who take or threaten any strike, work stoppage, picketing or other interruption of normal employment or production arising out of or in connection with any action taken by defendants to comply with the provisions of the Order.
 - 42. The Order resolves all issues between plaintiffs and defendants, who have agreed hereto, relating to alleged acts and practices of discrimination by said defendants to which the Order is directed, and, with respect to such matters, compliance with the Order shall be deemed to be compliance with Title VII, and shall be deemed to satisfy any requirement for affirmative

-28-

action by said defendants or any of them. The doctrines of res judicata and collateral estoppel shall apply to all plaintiffs with respect to all issues of law and fact and matters of relief within the scope of the complaint or the Order.

CONSENTED TO:

10, 11, am a: (aring WILLIAM A. CAREY General Counsel

Equal Employment Opportunity

Commission

ROBINSON Associate General Counsel Equal Employment Opportunity Commission

PAUL J. CURPAN
United States Attorney for the
Southern District of New York Attorney for Equal Employment Opportunity Commission, Plaintiff in 73 Civ. 4278

By: MICHAEL S. DEVORKIN

Assistant United States Attorney U. S. Courthouse

Foley Square New York, New York 10007

WILLKIE, FARR & GALLAGHER

One Chase Manhattan P

New York, New York

DEBORAH GREENBERG, ESQ.

10 Columbus Circle
New York, New York 10019

Pitorneys for Plaintiffs in 73 Civ. 3058

O'DONNELL & SCHWARTZ

By

A Member of the Firm
501 Fifth Avenue

New York, New York 10017 Attorneys for Defendant NMDU

TOWNLEY, UPDIKE, CARTER & RODGERS

A Member of the Firm 220 East 42nd Street New York, New York 10017

Attorneys for Defendant New York News, Inc.

JOHN J. STANTON, JR., ESQ. 229 West 43rd Street New York, New York 10036

Attorney for Defendant New York Times Co.

SIDNEY ORENSTEIN, ESQ.
551 Fifth Avenue
New York, New York 10017

Attorney for Defendant New York Post Corp.

SABIN, BERMANT & BLAU

By July Gua A Member of the Firm 350 Madison Avenue New York, New York

Attorneys for Defendants Long Island Press
Publishing Co. and Evening Journal

Bassociation, and Newman Microica Lealer Co.

BANDLER & KASS

authorize

Den 13. by A Member of the Firm 605 Third Avenue New York, New York 10022

Attorneys for Defendants Bay City News Co., Brodsky News, Inc., Crescent News Distributors Inc., Flushing News Co., Gaynor News Co., Hackensack News Co., Hudson County News Co., Jersey Coast News Co., Long Island News Corp., Newark Newsdealers Supply Co., New Brunswick Newsdealers Co., Passaic County News Co., S. Rachles Newsdealers, Rockland Newsdealers, Standard News Co. and Union County Newsdealers Supply Co., Boro Park News Co. and mer, + News Co., Inc.

ROSENMAN, COLIN, KAYE, PETSCHEK, FREUND & EMIL

A Member of the Firm 575 Medison Avenue New York, New York 10022

Attorneys for Defendants Bronx County News Co., Kings County Delivery, Lang News Co., Metropolitan News Co., Weinberg News Co., and Woodhaven News Agency

WILFRED L. DAVIS AND STEPHEN DAVIS

A Member of the 250 Broadway New York, New York

Attorneys for Brooklyn News Co., Imperial News Co. and T & T News Co.

STRUCKYSTRUCKYLAMA

STROOK, STROOK

A Member of the Firm 61 Broadway New York, New York

Attorneys for Defendant Amsterdam News Co.

PATTERSON, BELKNAP & WEEB

A Member of the Firm 30 Rockefeller Plaza New York, New York 10020

Attorneys for Defendant Dow Jones & Company, Inc.

A118 -31 -

SATTERLEE & STEPHENS

A Member of the Firm wry 277 Park Avenue

New York, New York 10017

Attorneys for Defendant Fairchild Publications, Inc.

J. DONALD HIGGINS, ESQ. 109 S. Tyson Street Floral Park, New York 11001

Attorney for Defendant East Island News Co.

FINE, TOFEL, & SAXL

A Member of the Firm

919 Third Avenue New York, New York 10022

Attorneys for Defendant El Diario Publishing Co.

SIDNEY A. FLOREA, ESQ. 100 East 42nd Street New York, New York

by Damin C. Mandell

Attorney for Manhattan News Co., Inc.

Appendix A

Denley Anson John Bing William Bryant Roland Broussard Harold Bussey Robert Carter James Dubose Ucal Foster Andrew Henry Ronald Johnson John Kearney Edwin Newman John Patterson Victor Pinto Donald Roberts Thomas Savage T. Richard Spears Bradie Speller

Elmer Stevenson

Appendix B

Louis Adesso Denley Anson

John Bing

Roland Broussard

William Bryant

Harold Bussey

Robert Carter

Daniel Chan

James Dubose

Joseph Faulk

Ucal Foster

Calvin Goggins

Andrew Henry

Leroy Jackson

Ronald Johnson

Joseph Jones

John Kearney

Warno McBride

Roy '1cLeod

William Mitchell

Edwin Newman

John Patterson

Victor Pinto

John Rial

Donald Roberts

Alfred Santiago

John Santiago

Thomas Savage

John Smith

T. Richard Spears

Bradie Speller

Luther Speller

Elmer Stevenson

Ronald Wiggins

Donald Woodford

Robert Yee

73-2558 d-900

APPENDIX C

UNITED STATES DISTRICT COURT		
SOUTHERN DISTRICT OF HELL YORK		
	-x	
JOHN R. PATTERSON, et al.,	:	
Plaintiffs,	:	
-against-	:	73 Civ. 3058 (LMI
NEWSPAP AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY, et al.,	:	
Defendants.	:	
	-x	
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	. :	
Plaintiff,	:	
-against-	:	73 Civ. 4278 (LWF
NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY, et al.,	:	NOTICE OR
Defendants.	:	SETTLEMENT AND HEARING
DOMINICK VENTRE, FRANK CHILLEMI,	-x	
GERALD KATZ, et al.,	•	
Inter enors.	:	
	: -x	
JAMES V. LARKIN, Individually and on	:	
behalf of all of the persons similarly situated,	:	
Intervenors.	:	
	-x	
TO: CERTAIN MIMORITY INDIVIDU PREVIOUSLY EMPLOYED, IN T	ALS	EMPLOYED, OR
I THE TOUGHT LINE THE T	ILL L	DELYERY DEPART-

TO: CERTAIN MINORITY INDIVIDUALS EMPLOYED, OR PREVIOUSLY EMPLOYED, IN THE DELIVERY DEPARTMENTS OF HEMSPAPERS AND MAGAZINES AND NEWS-PAPER DISTRIBUTORS LOCATED WITHIN 50 MILES OF NEW YORK CITY.

A-122

73-2558 1-208

Pursuant to an Order of Judge Lawrence W. Pierce of the United States District Court for the Southern District of New York, dated , 1974, notice is hereby given that hearing will be held in Room of the United States Courthouse, Foley Square, New York, New York at , 1974 (or at such adjourned time or times as the Court may without further notice, direct). The purpose of the hearing is to determine whether a proposed settlement of the above-captioned actions is fair, reasonable and adequate and should be approved by the Court and judgment entered thereon. The terms of the settlement are as set forth in a Settlement Agreement dated June 27, 1974 (the "Settlement Agreement"). The Settlement Agreement has been agreed to by counsel for plaintiffs and defendants in both actions.

This notice is directed to any minority individual who believes he or she may be a member of The Class described below, or that he or she has been improperly been excluded from The Class by the definition thereof.

DESCRIPTION OF THE ACTIONS

The complaints allege that the defendant publishers, the defendant wholesalers and the Newspaper and Mail Deliverers' Union of New York and vicinity (the "NMDU"), violated Title VII of the Civil Rights Act of 1964 and 42 U.S.C. Section 1981 by discriminating against minorities with respect to the compensation, terms, conditions and privileges of employment, by instituting and maintaining a shape system that inherently favored union members who are and have been predominantly white and other non-union whites related to NEDU members. The complaints request that the defendants be prohibited from so discriminating, request that an affirmative action plan be

173-1758 173-17558

entered into by the defendants, and also request that the defendants be ordered to pay back-pay to those minorities who demonstrate that they have lost wages because of the alleged employment discrimination.

A hearing on plaintiffs' motion for preliminary injunctive relief has been held and the Court has ordered that the hearing be consolidated with the trial of the merits. Defendants have acknowledged the numerical underrepresentation of minorities in their work force but have denied that any of their conduct has violated any employment rights of minorities and have asserted various affirmative defenses to the actions. Defendants continue to deny any liability and assert that the Settlement Agreement was entered into to avoid the burden of protracted litigation and to put to rest all further controversy as to them.

If the Settlement Agreement is not approved by this Court, the Court will render its own order with respect to the matters at a later date. The Court has not indicated whether it would rule in favor of plaintiffs or in favor of defendants, nor has the Court indicated what relief, if any, it would give plaintiffs. This notice is not to be understood as an expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by any party in these actions or the adequacy of the proposed settlement.

THE CLASS

The persons whose rights are, or may be affected by an order of the Court approving the Settlement Agreement are

any minority individuals (i.e. those defined by the EEOC as Black. Spanish-surnamed, Oriental and American-Indian) who (a) are employed on the Croup III lists of the New York Times and New York News as of June 1, 1974, (b) as of June 1, 1974, had shaped regularly and continuously (i.e. three or more times during each calendar week or, if on any such defendant's Group IV list, one (1) or more times during each calendar month) at the News, Times, New York Post or Long Island Press for at least six months but were not regular situation holders or on those newspapers' Group I or Group III lists then and (c) as of June 1, 1974, had left the employment of, or were terminated by, the News, Times, Post or Press on or after January 1, 1970 and were listed on a Group III or Group IV list or had shaped three (3) or more times during each calendar week for at least six (6) months at one of such newspapers when terminated.

SETTLEMENT AGREEMENT

The Settlement Agreement agreed upon between counsel for plaintiffs and defendants in both actions provides that the defendants will adopt an Affirmative Action Program (the "Program") designed to employ sufficient minority workers in the industry to achieve the goal (25% minority work force) set forth in the Program and that the defendants will establish a fund against which claims for back-pay may be made, as set forth below.

AFFIRMATIVE ACTION PROGRAM

This Program is designed to provide daily and long term work opportunities for minorities and to assist the defendants in achieving the goals of equal employment opportunities and equal opportunities for NMDU membership for minorities. In brief summary the significant terms and conditions of the Program are as follows:

A - 125

Publisher in any capacity other than in the per-

the dues pavable by

- (1) all new employees hired into the industry will be hired on the basis of 3 (minority) to 2 (non-minority) as positions become available;
- (2) for those defendants who maintain a Group I and Group III list employees hired onto the Group I list on a I (minority) to a I (non-minority) basis as positions become available;
- (3) NMDU membership to be offered to any person promoted to the Group I category;
- (4) the appointment of an administrator to oversee the progress toward the Goal and the implementation of the Program; and
- (5) the institution of a recruitment and training program for assistance to qualified individuals.

SETTLEMENT FUND

The Settlement Agreement provides that, in addition to the adoption and implementation of the Program, as set forth above, the defendant will deposit a total of \$110,000 in three funds (the "Settlement Fund") against which claims for back-pay may be made. The first and second funds will be used to pay back-pay claims by minority individuals described in "The Class" above. The third fund shall be used to provide back-pay to minority individuals who (a) were employed by any defendant (other than the Times, the News, the Post or the $^{
m P}$ ress) as of June 1, 1974 and had shaped three or more times during each calendar week but were not regular situation holders or on its Group I or Category I list then, or (b) as of June 1, 1974, were no longer employed or were terminated by it on or after January 1, 1970 and had shaped three or more times during each calendar week for not less than six months as of that time and who, after such termination, did not become regular situation holders or Group I or Category I employees at any other defendant as of June 1, 1974.

A-126

73-2558 d-908

.

each said regular situation

Attached hereto as Appendix A is a list of all those persons known to defendants the News, the Times, the Post and the Press to be members of "The Class." If you believe that you are a member of "The Class" as defined above and your name is not listed in Appendix A, you should so notify Deborah M. Greenberg, Esq., counsel for private plaintiffs, by writing to her at 10 Columbus Circle, New York, New York 10019, no later than , 1974.

If you are or have been employed by any defendant other than the Times, the News, the Post or the Press, and believe that you may be entitled to file a back-pay claim under the third fund described above, you should so notify Michael Devorkin, Esq., Assistant United States Attorney, U. S. Courthouse, Foley Square, New York, New York 10007, no later than

If this settlement is approved, all persons known to be entitled to back pay will be notified of the proposed distribution of the Settlement Fund and will be given an opportunity to object to that distribution prior to Court approval thereof.

ATTORNEYS' FEES

The Settlement Agreement provides that the defendants in 73 Civ. 3058 will pay attorneys' fees and expenses in the amount of \$67,000, which sum is apart from the Settlement Fund.

DISMISSAL OF ACTION

If the Settlement Agreement is approved, these actions will be dismissed, on the merits and with prejudice as to plaintiffs and all other members of The Class.

THE SETTLEMENT HEARING

Any Class member or other minority individual who believes that he or she has improperly been excluded from The Class by the definition thereof may appear at the hearing, in person or by duly authorized attorney, and show cause why the Settlement Agreement should not be approved as fair, reasonable and adequate and why a judgment should not be entered thereon; provided, however, that no person shall be heard in opposition to this Settlement and no papers submitted by any such persons shall be received or considered by the Court, except by special permission by the Court, with duplicate copies to Judge Pierce's Chambers unless such person shall file with the Clerk of this Court on or before August 16, 1974 a written notice of such person's intention to appear and object to the approval of this Settlement together with copies of all papers and briefs to be submitted to the Court at such hearing. Any class member who does not timely file such written notice shall not receive notice of any further proceedings, hearings, orders or any other matters in (nection with these actions including the entry of final judgment dismissing with prejudice any claim such class members may have which is the subject matter of these actions against the defendants and such class members shall be bound by all such proceedings, hearings, orders and other matters. The Court has the power to accept or reject the Settlement Agreement after giving due consideration to the comments of all interested parties and may adjourn the proceedings with respect thereto from time to time by notice of the same at the hearing.

INSPECTION OF PLEADINGS AND PROCEEDINGS

involved, reference may be made to the Court file of pleadings and proceedings in these actions, including the Settlement Agreement of June 27, 1974. This is available for inspection and copying at any time from 10:00 A. M. to 4:00 P.M., Mondays through Fridays, holidays excepted, at the Office of the Clerk, the United States District Court for the Southern District of New York, 40 Centre Street, New York, New York 10007. The Settlement Agreement and Order is also available for inspection and copying during such times at the Offices of the Adjustment Board on Hiring Practices, Room 1020, 220 East 42nd Street, New York, New York 10017.

Dated: New York, New York

, 1974.

LAWRENCE W. PIERCE UNITED STATES DISTRICT JUDGE

A-129

AGREEMENT

Between

Each of the Members of the Publishers' Association of New York City

and

Newspaper and Mail Deliverers' Union of New York and Vicinity

EFFECTIVE DATES

March 31, 1973

to

March 30, 1975



AGREEMENT

This Agreement is made and entered into by and between the Publishers' Association of New York City, as agent of the following individual Publishers: Times, News, and The Post and shall be binding upon each of the said individual publishers or its successor, hereinafter referred to as the "Publishers"; and upon the Newspaper and Mail Deliverers' Union of New York and Vicinity, havings its principal office at 41-18 27th Street, Long Island City in the City and State of New York, hereinafter referred to as the "Union."

SECTION 1

Territorial Coverage

The territory in and for which the terms and conditions herein contained shall be effective shall be the Metropolitan Area which, for the purposes, is defined as the corporate limits of the City of New York and all territory embraced within a radius of approximately fifty miles from Columbus Circle in the City of New York bounded approximately as follows:

To include all of Long Island to Montauk Point;

In Connecticut by Fairfield, Weston and Ridgefield:

In New York by Brewster, Carmel, Cold Spring, Cornwall and Warwick: In New Jersey, a line drawn through and including the town of Owens, approximately southwest to and including Culver's Lake, Swartswood, Blairstown, then south to and including Washington, southeast to and including Hampton, Clinton, and Allerton, then east to White House, then southeast to Readington, through Flagtown, Belle Mead, Princeton, and Cranbury, then east through Matthews to Brielle.

SECTION 2

Occupation Coverage

2-A. 1. Subject to the provisions hereinafter set forth, the Publisher recognizes the Union as the exclusive representative for collective bargaining of all their employees engaged in the following operations:

Route men; Recovery men; Canada men; Loaders; Dispatchers;

Checkers:

Mail, relay, plate, and mat chauffeurs when delivery is made by truck;

Tiers, carriers and floor men;

Automobile operators on routes and relay mail and newspaper delivery;

Men writing wrappers, handling, bagging and tying, by hand or by machine, all papers for New York City delivery; are adverse. Within thirty (50) days of the effec-

Men in charge of routing of mail at newspaper plants and at railroad, airway, heliport, bus and ferry terminals;

Men in charge of bundle conveyor outlets; Men tying rolls;

Men in charge of "El" and subway gangs;

Collectors, except in the case of any Publisher using a billing system operated through the auditing department.

Wrapper writing machines installed in the plant of the Publisher will be manned by a member of the bargaining unit provided such wrapper writing is currently performed by a member of the bargaining unit.

2-A. 2. Only routemen employed by the Publisher shall deliver bundles, which shall be tied with a wrapper made up by a member of the bargaining unit, or in the same manner as present practice, to honor boxes or vending machines in all areas where there is direct delivery, except that in the case of a hospital, club comprising one building, school or other government or municipal building, in which there is one or more honor box or vending machine, the delivery shall be made by the routeman to one designated drop-off point at such hospital, club, school, government or municipal building. Dealers may fill, empty, and collect each honor box or vending machine provided that collections for the publisher and returns are handled according to the current practice in the territory either by the driver or by office out this provision is not to be construed as an

billing. A dealer is herein defined as any person or entity who owns, leases, rents or has authorization to use property for the purposes of selling newspapers (i.e., a home delivery carrier having authority from a road commission to place honor boxes or vending machines on authorized property, delivery to such honor boxes or vending machines to be made by routemen employed by the Publisher). Each honor box or vending machine shall be listed on delivery sheets of each Publisher in the same manner as dealers are listed. No regular situation holder at the time any honor box or vending machine is established shall be laid off solely as a result of the establishment of such honor box or vending machine. The Publisher will furnish the union with a list of its vending machines and honor boxes, including their locations within 30 days after the signing of this agreement. Thereafter the lists will be furnished to the union every 90 days.

- 2-B. In addition to the foregoing, the terms and conditions hereof shall cover and the Union shall be recognized as collective bargaining representative of employees engaged in any other operation, occupation or branch of work which is now being performed exclusively by employees for whom the Union is now the recognized bargaining representative under the supervision of a foreman or assistant foreman, even though the same is not expressly hereinabove set forth.
- 2-C. Whenever new mechanical devices are introduced to perform or aid in the performance of

any of the operations included in the bargaining unit, such devices shall be operated exclusively by employees in the bargaining unit.

2-D. The terminals of railroads, bus and air lines, ferries and heliports located within the City of New York are recognized as delivery points for newspaper shipments.

A Publisher signatory to this agreement may establish Canada points which shall be recognized as delivery points for the shipments of newspapers to areas where for any reason distribution is interrupted.

2-E. 1. Bus carriers are not to be used to make deliveries within the limits of the City of New York; nor is the use of buses, ferries or airplanes to be substituted for existing means or methods of delivery to points within the Metropolitan Area as herein defined, except upon good cause shown and with the approval of the Joint Standing Committee and/or Appeals Board, but this shall not be deemed to curtail the right to make substitution for a bus or railroad now being used.

Over-the-Road Trucking

- 2-E. 2. (a) Employees may be required to operate tractor-trailer trucks under the terms and conditions of this article.
- (b) The General Foreman shall select employees to drive tractor-trailer trucks who are qualified, in order of seniority, in accordance with Section 4-B.

- (c) A reasonable number of employees shall be given the opportunity on a seniority basis to qualify for driving tractor-trailer trucks by receiving a training course at the expense of the Publisher.
- (d) It is understood and agreed that the Publisher shall have the right to continue and expand or decrease the volume of work currently being handled by delivery in regular trucks from the plant of the Publisher to an over-the-road carrier at the city line. This article is intended only to establish terms and conditions for operating tractor-trailer trucks directly from the plant of the Publisher to certain other points. The Publishers shall be free to select any runs to operate in this manner under the terms and conditions of this article.
- (e) Trailer trucks shall be driven by employees under the jurisdiction of this contract from the plant of the Publisher to certain transfer points to be agreed upon by the parties, except for those runs specifically dealt with in (e) (1) below. Such transfer points shall be within the Metropolitan Area but as near the limits of such areas as practical. In the event the parties cannot agree upon a transfer point for any particular run, the dispute shall be presented to the Impartial Chairman for final and binding decision.
- (1) Tractor-trailer truck runs directly from the plant of the Publisher to Albany or any other city designated by the Publisher outside the Metropolitan Area shall be driven by

scheduled work-week For the nurness of this

employees under the jurisdiction of this contract from the plant of the Publisher through to those cities.

- (f) The Publisher shall have the right to establish Publisher-operated combination delivery runs with tractor-trailers on deliveries to points outside the Metropolitan Area. On such runs the tractor-trailer truck will be driven by an employee of one of the participating papers from the plant of that paper, where it will be loaded with that paper to one of the presently recognized exchange points at or near the city line, where it will pick up the loads of the other papers. The other participating papers will deliver to that exchange point in regular trucks as at present.
- (g) In the event of a jurisdictional dispute with another union resulting from the operation of this article, the Publishers may discontinue the runs and deliver to presently recognized exchange points as at present.
- (h) A Publisher may at any time increase, decrease, or discontinue any over-the-road trucking and employ railroad, aircraft, or any other form of transportation provided for by this contract to the extent that such forms of transportation may now be employed.
- (i) No regular situation holder at the time any trailer-truck run is established shall be laid off solely as a result of the establishment of the run.

- (j) For any shift on which an employee drives a tractor-trailer on a run, he shall receive a bonus of an additional two dollars and twenty-five cents (\$2.25).
- 2-F. Where inspectors or employees in the Return Department of any Publisher are or become members of the Union, the Publisher in whose employ such inspectors or Return Department employees are or may be shall not enter into any contract with any other union which will require such inspectors or Return Department employees to join such other union or to give up membership in this Union as a condition to the continuance of their employment.
- 2-G. Where a Publisher distributes through branches to his own home delivery service, the bundles for the individual carrier boys shall be tied by employees in the bargaining unit, present practice, however, excepted.
- 2-H. Conditions and methods of operation now prevailing in the respective mailrooms of the Publishers shall not be disturbed insofar as they affect the jurisdiction of the several unions operating in the mailrooms. The Union, however, shall try to negotiate agreements with any other union operating in the mailrooms which will result in the elimination of duplication of work and in the setting up of a procedure for the disposition of any jurisdictional conflicts which may arise in the future. In the event such negotiations do not result in agreements within thirty (30) days from the effective date hereof, then this Union shall on

its part submit the entire matter to arbitration in accordance with the rules of the American Arbitration Association and shall be bound by the results of such arbitration, provided such other union or unions agree to such an arbitration.

When full operations commence at an annex or a new or additional building owned or operated by a Publisher signatory to this Agreement, within the territory covered by this Agreement, the jurisdiction of the Union in such building shall be as defined herein, and in 2-A. and 2-B. of this Agreement.

- 2-I. Employees may be required by their employer to perform any of the operations hereinbefore specified, but no employee who is or has been performing satisfactorily the particular work assigned to him shall be discharged because of his inability to perform some other operation and no employee shall be refused employment for the performance of any operation as to which there is a vacancy and for the doing of which he is qualified solely because he is not qualified to perform some other operation.
- 2-J. Any employee shall be entitled to apply for work in the performance of the several operations set forth in this section of the office or plant of any of the Publishers parties hereto. Any employee who shall be in default with respect to turning over to any Publisher funds collected by him for or on behalf of such Publisher shall be deprived of the right herein created until

4-F hereof or absence due to a neid vecetion on

restitution shall have been made by the defaulting employee.

- 2-K. Any employee who is in the employ of any Publisher in any capacity other than in the performance of any of the operations set forth in this section, except as foreman or assistant foreman, shall not be permitted to perform any of such operations.
- 2-L. This is a Union shop contract providing and intending to provide the maximum Union security permissible under the Labor Management Relations Act, 1947, as amended to the extent embodied in the Appendix and Section 17 of this agreement.

All men now employed as regular situation holders shall remain members of the Union, and all men hereafter employed as regular situation holders shall acquire and maintain Union membership status no later than thirty (30) days after they attain regular situation holder status.

All men employed or to be employed to fill the requirements of the Publisher shall be competent and able to perform the particular operation for which they are required and be able to work at straight-time rates. If a Publisher requires his regular employees to work in excess of a fifth shift, overtime at the rate of time and one-half shall be paid for the full shift.

2-M. No employee shall engage any person to aid him in the performance of the work assigned to him by his employer.

2-N. Upon receipt of a signed authorization the Publisher shall deduct from the pay check of all regular situation holders, including Group 1 men, the dues payable by each said regular situation holder in the Union as per a schedule submitted in writing by the Union during the period provided for in said authorization. Deductions shall be made from the second pay check of the employee in each month and such deductions shall be remitted to the Secretary-Treasurer of the Union not later than thirty (30) days thereafter. The Publisher shall furnish the Secretary-Treasurer of the Union with a monthly record of those from whom deductions have been made and the amount of said deductions. The Union agrees to save the Publisher harmless from any action which may be brought against it by reason of these checkoff deductions, and the Union further agrees to notify the Publisher thirty (30) days in advance of any Union-approved change in such schedule of deduction of dues.

It is agreed that this provision is subject to Section 302 of the Labor Management Relations Act, 1947, and is subject to any amendment necessary for full conformity therewith.

SECTION 3

Conditions of Work

3-A. Each Publisher shall continue in effect the schedules shown in the last notice of such schedules to the Union for the duration of this contract,

indicating the maximum number of pages and papers that can be included in a single load or bundle, which maximum has been determined in accordance with the operating conditions prevailing at the particular plant and varies with the size and weight of newspapers, but which in no event may exceed forty-six (46) pounds.

Each Publisher shall, immediately after the effective date hereof, publish a schedule showing the maximum number of loads or bundles which can be placed on moving tables or similar apparatus and on automobile trucks of various sizes and which employees may be asked to carry at any one time and the conditions under which tailmen are to be employed on automobile trucks.

Copies of the schedules shall be furnished to the Union and permanently posted in the plant at places accessible to the employees affected.

If the Union believes such schedules or any part thereof are unduly burdensome it may submit its complaint in accordance with Section 16 hereof. If the Publisher believes that newspaper operational conditions warrant it it may submit its proposed changes in accordance with the arbitration provisions hereof.

3-B. Each Publisher shall have the right to determine the manner in which his newspapers are to be wrapped or tied, the places at which routemen are to receive newspapers, and the number of dealers to be served on the several respective routes. The Union may, however, make complaint

that any specific practice is unduly burdensome and that any particular route is unduly difficult to serve in the manner directed by the Publisher, and such complaint, if not satisfactorily adjusted, may be submitted to the Joint Standing Committee and/or Appeals Board.

- 3-C. Canada point men shall at their respective points personally supply all dealers and newsboys.
- 3-D. 1. The right of the Publisher at any time to lay off men for economic or business reasons is hereby recognized. Each Publisher shall have the right from time to time to increase or reduce the number of routes, carriers or deliveries, and to combine, amalgamate, condense, alter, discontinue or otherwise rearrange routes or deliveries as such Publisher may find necessary or desirable, provided, however, that if any such change results in the layoff of any employee then employed by the Publisher as a regular situation holder the layoff may be reviewed by the Joint Standing Committee and/or Appeals Board to ascertain whether it was for economic or business reasons.
- 3-D. 2. The words "economic or business reasons" are used herein in their usual and ordinary sense and their meaning shall not be confined by any claim of prior practice or interpretation to any particular economic or business reasons, but they are meant to include all reasons of an economic or business character.
- 3-D. 5 Should a Publisher terminate the delivery by a wholesaler or news company and use

a direct delivery in place thereof, then the Publisher shall give employment to those regular situation holders laid off by the wholesaler or news company deprived of such delivery. This provision shall in no way limit the Publisher's right to lay off pursuant to Section 3-D, provided, however, that no lay-off action shall be instituted until fifteen (15) working days after employment is given to those regular situation holders laid off by the company deprived of such delivery. This section shall in no way modify or limit any of the provisions of this contract relating to methods and extent of direct delivery and combined delivery.

tor a berroa appre-

- 3-D. 4. The Association shall furnish the Union in writing a list of the regular situation holders employed by each publisher as of May 1, 1973. No employee so listed shall be laid off during the term of this Agreement because of the installation and use in any plant or plants of any publisher of any automated process or automated system after May 1, 1965. Such automated process or automated system shall be construed to include, among other such automated processes or automated systems, conveyor belts, wire-tying machines and the like within the jurisdiction of the Union.
- 3-D. 5. In the event of a determination duly made that the installation and use of any such automated process or automated system in any plant or plants of a publisher has created an excess of regular situations, affecting the regular situation holders on the above mentioned list

(which determination shall be made within two weeks of the installation and use of such automated process or automated system), the least senior regular situation holders, on such list to the extent of such excess, shall remain employed as regular situation holders, but their regular situations shall be bid for by the remaining regular situation holders in the manner provided for in Section 4-B of this Agreement. As vacancies occur in regular situations, the aforesaid excess regular situation holders shall bid and the remaining regular situation holders shall be entitled to bid for regular situations in the manner provided for in Section 4-B. Pending the award of an available regular situation to an excess regular situation holder, and within two weeks after his regular situation was declared excess by reason of the installation and use of an automated process or automated system, he shall be assigned a regular starting time and regular days off which, however, shall not by reason thereof be deemed to create a new regular situation.

3-D. 6. Nothing in this section shall be construed to affect the obligation of any publisher under Section 5-G or any other provisions of this Agreement to maintain as many regular situations as possible, subject to the terms of Sections 3-D. 1 and 16 of this Agreement, and other pertinent provisions thereof, nor the obligation or rights of any publisher or of the Union with respect to the layoff of any regular situation holder not on such list, nor to require a publisher to hire a new regular situation holder for

any situation which may become excess as a result of the installation and use of such automated processes or automated systems.

- 3-E. Methods and extent of direct delivery and combined delivery through wholesalers or news companies as they exist within the Metropolitan Area at the time of the effective date hereof are to be continued, and no change can be made except on application to and with the approval of the Joint Standing Committee and/or Appeals Board.
- 3-F. In the development of new sections or new routes within the Metropolitan Area, the Publisher shall be free to use a direct or a combined delivery through wholesalers or news companies as they may see fit and they may from time to time change from one form to another as they may find desirable.
- 3-G. Present practices with respect to the receipt by wholesalers and news companies of the newspapers of the Publisher shall continue unaltered, subject, however, to being changed in any particular respect on good cause shown and with the approval of the Joint Standing Committee and/or Appeals Board.
- 3-H. Employees in the performance of their duties shall not be exposed to undue hardship or hazard or asked to perform excessive work tasks. Rolling tables and similar apparatus shall not be overloaded; all motor vehicles shall be maintained in safe working condition; and measures shall

rates shall be paid for any work done on advance

be taken, insofar as practicable, to protect employees against exposure when weather conditions are adverse. Within thirty (30) days of the effective date of this agreement all motor vehicles shall be equipped with heaters and defrosters which shall be maintained in good working condition at all times. The Union may at any time make complaint that this provision is not being complied with at any plant, and if the complaint is not satisfactorily adjusted, it shall be submitted to the Joint Standing Committee and/or the Appeals Board.

The Publisher will provide Accidental Death and Dismemberment Insurance coverage in the amount of \$15,000 for employees on motor vehicles or on routes away from the plant while in the employ of the Publisher for damages arising out of injuries or death resulting from assaults or other criminal conduct.

- 3-I. Each Publisher shall have the right to operate either a day or night shift, or both, as such Publisher may find necessary in the production, handling and distribution of any and all sections of such Publisher's newspaper, and each Publisher shall pay for such work at the scale of wages fixed by this agreement for such work and for the respective shift during which the same is performed.
- 3-J. Where the handling of advance sections entails the creation of overtime, the Union and the particular Publisher involved shall make every effort to eliminate such overtime by having such

work performed by newly created regular situation holders in so far as that may be practicable, but this provision is not to be construed as an obligation upon any Publisher to have the delivery and distribution of advance sections handled by employees working less than full time, nor an obligation to pay for such handling and distribution at extra rates when such work is being performed during regular working hours.

Standing Committee and/or Appeals Board

3-K. The Publisher shall furnish all trucks or other delivery equipment, and no Publisher shall enter into any agreement with any employee in the employ of such Publisher or any other Publisher for the use in the Publisher's business of any truck, automobile or other delivery equipment which such employee may own, lease, or control. However, existing arrangements for the use of trucks, automobiles or other delivery equipment owned by employees in the employ of the Publishers are to continue and may be terminated only by mutual agreement or when a truck, automobile, or other piece of delivery equipment no longer is fit for use. The Publisher, however, at any time shall have the option, to be exercised upon sixty (60) days' notice in writing, to purchase a truck, automobile, or other piece of delivery equipment owned by an employee in the employ of such Publisher at its then fair value This provision to purchase shall not be invoked so as to discriminate against the employee from whom the purchase is made. Charges of discrimination arising under this provision are appropriate matters for review by the Joint Standing Committee and/or Appeals Board hereinafter provided.

3-L. All advertising and promotional matter of each Publisher's publications, except such advertising and promotional matter as is to be attached by paste, which work falls within the work of bill posting, shall be handled, distributed or disposed of as the Publisher may direct, under the provisions of this contract. All advertising or promotional matter which does not advertise or promote the Publisher's own publication, or which consists of advertising not carried in regular editions or which does not carry the name of the Publisher's own publication, shall be tied, handled and delivered by an extra crew.

3-M. The Union shall not contract for any of its members nor knowingly allow any of its members to contract with any person publishing within the City of New York for the performance of any of the operations set forth in Section 2 hereof at a wage rate lower than herein fixed for such operation or upon any other terms or conditions more favorable than the terms and conditions herein contained without at the same time permitting any of the Publishers, parties hereto, at any time thereafter on written notice to the Union to make effective in his own plant such lower wage rate or any or all of such other more favorable terms or conditions. Nothing herein contained, however, shall be deemed to prevent the Publisher and the Union, at the special request of any person publishing within the City of New York, mutually to agree in writing to the institution in such person's plant of wage rates or other terms and conditions differing from those herein provided for without obligating the Union to grant similar conditions elsewhere and if the Publisher and the Union cannot reach an agreement with respect to such request, the matter may be submitted to the Joint Standing Committee and/or Appeals Board which, upon good cause shown, shall have the power to grant such request in whole or in part and upon such terms as it may see fit.

3-N. Neither the Publisher nor the Union shall be bound by any provision of the articles of association, constitution, charter, by-laws, codes, laws, regulations, resolutions or rules of any character which any of them may respectively adopt to the extent that the same or any part of the same may be in conflict with the provisions hereof. Each party, however, shall recognize the right of the others respectively to adopt such rules and regulations of any character not in conflict with the provisions hereof which may be deemed necessary or proper for the management of its own affairs.

3-O. The Union shall use its best efforts collectively and individually to promote the business and interests of the several Publishers with the retail outlets, and with the general public.

3-P. In the event of death in the immediate family of a regular situation holder or Group I Extra, such regular situation holder or Group I Extra shall be granted three (3) days' leave without loss of pay, provided such three (3) days fall

within the regular situation holder's regularly scheduled work-week. For the purpose of this paragraph, immediate family shall include spouse, parents, children or brother or sister, motherin-law, father-in-law, sister-in-law, brother-in-law and legal dependents as defined by the Internal Revenue Code and Regulations.

3-Q. For any shift on which an employee is assigned by a foreman to include among other duties the operation of a hi-lo fork lift truck (not including any type walk truck) a bonus of an additional 25 cents shall be paid.

SECTION 4

Hiring Practices - Seniority

- 4-A. 1. (a) As of the effective date hereof, all employees, including foremen and assistant foremen, holding regular situations with each newspaper signatory hereto shall be arranged on seniority and priority lists in accordance with their length of service in such capacity with said newspaper. The seniority list shall be used to determine the order in which regular situation holders may be laid off.
- (b) Otherwise seniority is herein defined as length of service based on regularity and continuity of service and shall be used to determine the order in which employees in the extra categories are to be hired. Priority, sometimes called promotional priority, is herein defined as

the order in which employees are to be promoted and is to be used to determine which employees may lay claim to a newly created or vacant regular situation.

- 4-A. 2. (a) All persons not on the list of regular situation holders as hereinbefore defined shall be known as extras and shall be hired for extra work in accordance with the following rules and sequences:
- (b) The order of hiring by groups for each Publisher shall be:
- Group 1. Unemployed Extras—All persons listed in Group 1 as of March 31, 1965 (except those holding regular situations elsewhere in the industry) and former regular situation holders in the industry who have lost such regular situations through merger, consolidation, or permanent suspension of a newspaper or company in the industry as herein defined; or whose application for listing in this group is approved by the Adjustment Board by reason of loss of such regular situation because of illness, physical incapacity or for other such good and sufficient cause.
- Group 2. Industry Extras Regular situation holders and Group I extras elsewhere in the industry in industry-wide seniority order.
- Group 3. Regular Extras-Steady shapers listed

on the Publisher's list in Group 3 as of March 31, 1965; thereafter, men who signify their intention to and do shape steadily.

- Group 4. Casuals—Men who are not connected with the industry but who wish to shape a delivery department from time to time.
- (c) For purposes of promotion, men, if competent, shall be given vacant regular situations from the groups in the following order:
 - 1. Group 1-Unemployed Extras.
 - 2. Group 3-Regular Extras.
- (d) The order of hiring extras as of the effective date of this Agreement shall be in accordance with the most recently dated Hiring Lists published by the Adjustment Board.
- (e) All extras listed in Group 1 and 3 must shape six (6) shifts per week or work five (5) shifts per week, in order to retain such listing. Each extra shall receive credit for working or for shaping for no more than one (1) shift in any twenty-four (24) hour period and only if he is present at the time of the hiring for each shift allure to work at a shape where men of the sar group with less priority obtain work shall constitute failure to shape, except where competency is a factor. Men listed in Groups 1 and 3 who are removed from such listing for failure to meet the shape requirements shall be prohibited from reapplying for such listing for a period of six (6) months. Casuals listed in Group 4 must work at

least once for the Publisher during any four (4) consecutive fiscal weeks. Failure to work or shape by reason of the exceptions provided in Section 4-F hereof, or absence due to a paid vacation or holiday shall not result in delisting.

- (f) If two or more men tie as to the date for listing, the tie shall be broken by the Adjustment Board.
- (g) The Adjustment Board shall continue to process applications for listing in Groups 1 and 3 and decide all disputes during the term of this agreement. Only the Adjustment Board shall have the authority and the responsibility of adding to, deleting from, or changing the lists. Each office shall work from its last list as published by the Board; and if a foreman needs more men than are available on such list, he may engage such men as he may be able to obtain. Such men, as may seek listing in Groups 1 and 3, shall be required to fill out application forms which the foreman shall transmit immediately to the Adjustment Board.
- (h) No person may be listed in Groups 1 or 3 in more than one (1) newspaper, except for such Group 1 double listings as were permitted in the Agreement effective November 1, 1953.
- (i) The word "industry" as used herein shall encompass all companies employing persons engaged in the categories contained in Section 2 hereof by any Publisher, newspaper distributor or wholesaler, or magazine distributor or wholesaler

in the Metropolitan Area defined here in Section 1.

- (j) A situation holder in the industry shall have the right to apply for Group 1 listing with a signatory Publisher subject to the following limitations:
- (1) Such situation holder must have held continuously such situation for a period of at least five (5) years prior to the date of making application for the transfer.
- (2) The number of applications which may be approved for transfer to any single signatory Publisher shall not exceed two per cent (2%) of the total number of situations in the delivery room of said Publisher as of January 1st of the year in which application for the transfer is made.
- (3) Transfers of regular situation holders from non-signatory employers to Group 1 listing with a signatory Publisher shall not exceed one third (1/3) of the maximum allowance of two per cent (2%) in any one calendar year. Such transfers from signatory Publishers shall not exceed two thirds (1/3) of such maximum allowance in any one calendar year.
- 4-A. 3. No man may hold a regular situation in more than one (1) shop.
- 4-A. 4. No man shall be employed or promoted unless he is qualified and competent for the work or the job in question.
 - 4-A. 5. Should the application of the foregoing

such Publisher shall be reduced accordingly.

procedure for hiring and promotion be in conflict with any order, decree, or judgment directed against any signatory Publisher or the Union by the National Labor Relations Board or any Court of competent jurisdiction the procedure shall be changed to conform with such order, judgment, or decree, with respect to the parties against whom such order, judgment, or decree shall run and for the effective term thereof solely.

- 4-B. In the event a regular situation becomes vacant or is newly created, it shall be filled immediately in accord with Section 4-A. 2. (c) of this agreement but on a temporary basis. It shall be filled permanently on the basis of qualification and competence from among the regular situation holders in accord with their seniority standing; provided, however, that when any such vacancy occurs or a new regular situation is created, it shall be posted by the Publisher within one (1) week and for four (4) weeks thereafter and shall be filled immediately at the end of that four (4) week period. Such job and the subsequent vacancies not in excess of five created by filling it shall be filled by regular situation holders provided that the last such subsequent vacancy shall be filled only by a relayman, relief man, bulldog routeman or floorman. The last vacancy thus created shall be filled by the employee moved up in accord with Section 4-A. 2. (c) as aforesaid.
- 4-C. If any unemployed extra is offered a situation in accordance with the above provisions for which he is qualified and competent and refuses to

accept the same, he is to be placed at the top of the Group 3 regular extra list. If a regular extra is offered a situation in accordance with the above provisions for which he is qualified and competent and refuses to accept the same, he shall be placed at the end of the Group 3 regular extra list. A regular situation holder, however, may refuse a situation offered in accordance with the above provisions without losing his seniority standing on either the promotional priority list or for purposes of layoff.

- 4-D. If a regular situation holder or an extra accept a new situation in accordance with the preceding provision and then be found to be unqualified for the work of such new situation, he shall be placed in the first vacancy for which he is qualified and competent which occurs in the course of filling the situation just vacated by him, and he shall be placed at the bottom of the promotional priority list, but he shall retain his former seniority position for purposes of layoff.
- 4-E. In the event of a reduction in the number of regular situations, the layoff shall be in reverse order of seniority standing, and the employees so laid off because of such reduction shall be placed at the head of the unemployed extra list taking places thereon in accordance with their seniority standing. There shall be no layoff except on two (2) weeks' notice to the Union and to the employee affected.
- 4-F. An employee holding a regular situation who is absent from work in such regular situation

practices excepted, however.

for a continuous period of twenty (20) regular working days or more, or who is absent from work in such regular situation for a period aggregating more than forty (40) working days (equivalent to eight [8] five-day weeks during the calendar year) shall be considered to have vacated his regular situation. This provision, however, shall not apply, nor shall seniority be lost by any employee because of absence due to any of the following reasons, provided notice in writing thereof has been given to the Publisher:

- Illness, disability or partial incapacitation by reason of advanced age, during which time the man has no employment elsewhere; or
- 2. Service in the Armed Forces of the United States; or
- 3. Work performed in behalf of the Union.

Employees absent for the foregoing reasons shall, upon return to work, be restored to their regular position on the regular situation holders list with the same promotional priority and seniority standing held by them prior to such absence.

- 4-G. The Lists herein provided for shall be kept permanently posted within each plant and in garages, and copies thereof, together with any changes therein from time to time, shall be furnished by the Adjustment Board.
- 4-H. Any question which may arise with respect to the qualifications or competency of employees or otherwise with respect to the interpretation or application of these provisions shall, if not satis-

factorily adjusted between the Union and the par-

Joint Standing Committee and/or Appeals Board.

SECTION 5

Shifts and Regular Working Time

- 5-A. A regular day's work shall consist of 7 hours and 54 minutes or less consecutively between the period of 7:00 a.m. to 8:00 p.m., which period shall be known as the day shift.
- 5-B. A regular night's work shall consist of seven (7) or less consecutive ours of work on short nights and eight (8) or less consecutive hours of work on one long night between the period of 6:00 p.m. and 10:00 a.m. A regular night's work on Saturday shall consist of seven and one-half (7½) or less consecutive hours of work when the period shall begin at 4:00 p.m. These periods shall be known as the night shift.
- 5-C. A regular work week for employees working during day shifts shall consist of no more than 39½ hours per week, exclusive of overtime divided over not more than a five-day period.
- 5-D. A regular work week for employees working during night shifts shall consist of no more than thirty-six and one-half (36½) hours per week, exclusive of overtime, divided over three (3) nights of no more than seven (7) hours each and one (1) night of no more than eight (8) hours and Saturday night of no more than seven and

one-half (7½) hours. Each Publisher may determine which is to be the one long night, and no night off shall be allowed on such long night or Saturday night except with the consent of the Publisher involved.

- 5-E. Employees shall receive a full day's or a full night's wage, at the rates herein specified, for each regular day's work or for each regular night's work.
- 5-F. Work performed in excess of the hours constituting a regular day's work or a regular night's work, or performed in excess of the five-day or five-night period over which the employee's regular work week is distributed, or performed before or after the hour at which the shift during which the employee regularly works begins or terminates as herein provided, shall be deemed overtime and shall be compensated for at the overtime rates fixed herein.
- 5-G. In arranging the regular work week for regular situation holders, the five-day or five-night periods, respectively, shall be staggered and distributed through the calendar week so that as many regular situations as possible may be created and maintained.
- 5-H. All work performed in the handling, distribution and delivery of the issue of any evening newspaper of which the full printing and circulation does not begin until after 12:01 a.m., Sunday, shall be paid for at double the week-day regular and overtime rates.

- 5-I. Double the week-day regular and overtime rates shall be paid for any work done on advance sections on Sundays between the hours of 10:00 a.m. and 6:00 p.m.
- 5-J. Thirty (30) days after the signing of this agreement, Publishers shall furnish the chapel chairman a list of the starting time and days off of regular situation holders. If the Publisher plans to change the time at which a regular situation holder reports for work or to change days off, four (4) days' notice of such changes shall be given to the man or men involved and to the chapel chairman. If the Publisher fails to give four (4) days' notice, then the time involved in the change from the time of notice for four (4) days, shall be paid for at time and one-half.
- 5-K. Work performed on Sunday between the hours of 10:00 a.m. and 6:00 p.m. shall be paid for at the rate of time and one-half.
- 5-L. An employee required to finish his job at a point sufficiently far from where it began to involve substantial travel time shall be compensated therefor. The parties are directed to negotiate such an arrangement and if they are unable to agree within thirty (30) days after the signing of this agreement the matter shall be submitted to the Joint Standing Committee and/or Appeals Board.
- 5-M. Overtime before and after a day or night shift shall be worked as required by the employer. Any charge that overtime is being required or

distributed unfairly may be taken to the Joint Standing Committee and/or Appeals Board for settlement.

5-N. An inside employee on duty within the plant shall be sent out on paid lunch during the period after the end of the second hour from the time he started work and before the end of the fifth hour from the time he started work. In the event an inside employee on duty within the plant is ordered by a foreman or assistant foreman to work through such paid lunch, such employee shall be paid one-half hour at the rate of time-and-one-half. Present practice regarding the paid lunch period shall prevail as to an outside employee on duty away from the plant.

SECTION 6

Foremen

6-A. Authority and control over all employees shall be vested exclusively in the office through its representative, the foreman, who shall be a member of the Union. In the absence of the foreman, the assistant foreman-in-charge shall so function.

Foremen or assistant foremen shall not give orders or exercise authority contrary to contract provisions or the law. The Union shall not discipline the foremen or assistant foremen for carrying out the instructions of the Publisher or his representatives in accordance with this agreement.

6-B. Each Publisher shall have the right to

appoint as many foremen and assistant foremen as he may see fit and shall have the right of removal. The terms of a foreman's or assistant foreman's employment, including hours, wages and other conditions of work, shall be a matter of agreement between the Publisher and such foreman or assistant foreman, except that no foreman or assistant foreman is to be permitted to perform any of the operations specified in Section 2 hereof during any time in excess of the hours constituting a regular day's work or a regular night's work, as defined herein, nor during any part of a calendar week after such foreman or assistant foreman has had five (5) regular days or regular nights of work in such week.

- 6-C. Whenever a morning newspaper emp' ys employees on a day shift or an evening newspaper employs employees on a night shift, such employees shall be under the supervision of a foreman or an assistant foreman.
- 6-D. Whenever a Publisher has more than one plant there shall be a foreman or assistant foreman in each plant.
- 6-E. Only the foreman or the assistant foreman in charge shall be empowered to execute the provisions, terms and conditions hereof pursuant to the directions of the Publisher, to issue orders, to hire or to discharge, and no one except the foreman or assistant in charge shall have the right, in accordance with such directions, to issue orders and make changes in operating procedures.
 - 6-F. Any employee having a complaint to make

with respect to the conduct or orders of a foreman or an assistant foreman or with respect to alleged discrimination or other unfair treatment by a foreman or assistant foreman, may take up such complaint with the person duly designated by the Publisher for such purpose through the shop chairman or other Union representative, and if such complaint is not satisfactorily disposed of, it may be submitted to the Joint Standing Committee and/or Appeals Board.

6-G. A Publisher may make complaint that the Union has improperly imposed penalties upon a foreman or an assistant foreman for carrying out the specific orders or instructions of the Publisher, and if the complaint be not satisfactorily adjusted the same may be submitted to the Joint Standing Committee and/or Appeals Board.

SECTION 7

Holidays

7-A. All regular situation holders who are not required to work shall receive the following holidays, or days observed as such, off with pay: New Year's Day, Lincoln's Birthday, Washington's Birthday, Decoration Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day and Christmas. In the event a regular situation holder is called upon to work on any of the named holidays, or days observed as such, he shall be paid in accordance with Section 7-C hereof. No holiday payment of any kind shall be made

to an employee who trips, i.e., an employee who, scheduled to work on a holiday shift, does not report for work and obtains employment elsewhere in the industry on the same holiday.

- 7-B. Holidays shall extend from the beginning of the night shift on the night before the holiday to the end of the day shift of the holiday itself. Overtime performed before or after a holiday-rate shift shall be at time and one-half the holiday rate.
- 7-C. Any employee required to work on any of the aforementioned holidays or days observed as such shall receive not less than two (2) days' pay for the regular shift worked and thereafter price and one-half of the holiday rate. There shall be no rearrangements of the days or nights constituting the regular work weeks of employees in the office or plant of any Publisher within any calendar week in which a holiday occurs. Regular situation holders not required to work shall receive a full day's pay or a full night's pay, in accordance as they ordinarily work during the day or night shift, for every holiday falling on a day or night of their regular work week, irrespective of whether the newspaper on which they are employed is issued on such holiday or not. However, nothing in this section shall require an employer to make holiday payments to an employee on sick leave as defined in Section 13-B when such sick leave has been in excess of two (2) years.
 - 7-D. Extras who have had at least four (4)

days' work with a Publisher during each of the three (3) payroll weeks immediately preceding the payroll week in which a holiday occurs and during such week as well shall receive a full day's pay for such holiday irrespective of whether such Publisher's newspaper is issued on such holiday or not.

- 7-E. Work performed by employees on a holiday for a Publisher whose newspaper is not issued on such holiday shall be paid for at double the regular and overtime rates.
- 7-F. An employee covered by this Agreement who is eligible for benefits under the Workmen's Compensation Law, including the Disability Benefits Law, and who, on the same day, is eligible for holiday pay under this Section 7, will be paid on such a holiday both the pay provided by this Section and the benefit payable under the law.

SECTION 8

Chapel Chairman

The Union may have a chapel chairman in each office or plant who shall perform his regular duties as an employee of the particular Publisher, and who may act on behalf of employees covered by the contract employed by such Publisher and who may report to the Union any claims, complaints or alleged violations of the terms and conditions hereof which cannot be settled satisfactorily with such Publisher through the foreman or assistant foreman in charge. Chapel chairmen

shall not be discriminated against on account of their activities on behalf of the Union or the employees provided these activities do not interfere with the performance of their duties, but the presentation of claims or complaints and the attempt to adjust the same satisfactorily shall not be deemed such an interference.

The Chapel Chairman shall have the right to inspect the circulation reports, and the time and/ or work sheets of persons employed in the bargaining unit. The Publisher is required to make available for inspection within forty-eight (48) hours, upon request, overtime recorded on daily time sheets for the preceding fiscal week. In the event that at any time the Chapel Chairman is refused the right of inspection, he may make demand therefor in writing, provided, however, that the Publisher shall not at any time be required to produce for the inspection of the Chapel Chairman circulation reports, or time and work sheets for a period greater than three (3) weeks prior to the date of such written demand. No chapel meeting shall be held during working hours.

SECTION 9

Sections Printed in Outside Plants

9-A. All parts or sections of a newspaper destined for delivery within the Metropolitan Area, printed in a plant not owned or controlled by the Publisher of such newspaper shall be delivered in bulk from the place of printing to the plant

sary in the case of any Contributing Employer

or plants operated by the Publisher, and after such parts or sections reach the platform or platforms of the plant or plants to which such bulk delivery is made they shall then be handled by employees represented by the Union.

9-B. In the event a Publisher has parts or sections of his newspaper printed in a plant not owned or controlled by the Publisher and located in the Metropolitan Area, as herein defined, such Publisher shall endeavor to have the bulk delivery of such parts or sections from the place of printing to the Publisher's plant or plants made by employees in the unit, providing doing so does not involve the Publisher in increased cost or a jurisdictional conflict with some other union. In advance of making arrangements for such outside printing or renewing existing arrangements, the Publisher shall notify the Union and give it an opportunity to procure such bulk deilveries for employees in the unit.

SECTION 10

Half-Day Boys

- 10-A. In accordance with and subject to the provisions herein contained, half-day boys may be employed who are not members of the Union upon such terms as may be agreed upon between such boys and the Publishers.
- 10-B. A "half-day boy" means an employee of the Publisher working within the hours herein-

he Adjustment Roard or otherwise as the Trus-

after specified in aid of and under the direction of a route man.

- 10-C. No Publisher of a morning newspaper may employ any half-day boys.
- 10-D. Publishers of afternoon papers may employ half-day boys to work only between the hours of three o'clock and eight o'clock in the afternoon, except on Saturdays when they may begin at 12:00 o'clock noon.
- 10-E. No half-day boy may be employed to draw newspapers directly from a Publisher's plant.
- 10-F. Publishers employing half-day boys shall prepare a list of all such boys now in their employ and the particular routes or points at which they are employed, and shall furnish copies of such lists together with written notice of all subsequent changes therein to the Joint Standing Committee and/or Appeals Board, the Publishers' Association, and the Union.
- 10-G. Except as hereinafter provided, each Publisher shall be limited to the number of half-day boys now employed by him, nor shall he increase such number, nor shall he increase the number of half-day boys now employed by him on any given route or at any given point, nor shall he employ any half-day boys on a route or at any given point on which none is being employed at this time.
- 10-H. In the event of the discontinuance of a route on which a half-day boy or boys are now employed, such boy or boys shall be eliminated

and the positions so vacated shall not be filled, and the total number of half-day boys permitted to such Publisher shall be reduced accordingly.

- 10-I. In the event of the merger or consolidation of routes on any of which a half-day boy or boys are now employed, the disposition of such boy or boys shall become a matter of negotiation between the Publisher and the Union, and on failure to be satisfactorily adjusted shall be submitted to the Joint Standing Committee and/or Appeals Board.
- 10-J. In the event a Publisher who is permitted to employ half-day boys opens a new route, he may for good cause shown and with consent of the Joint Standing Committee and/or Appeals Board employ a half-day boy on such new route, even though it may thereby increase the total number of such boys which he is permitted to employ.

SECTION 11

Non-Compliance

The Publishers' Association and the Publishers respectively, shall not jointly or severally, either directly or indirectly, give any assistance in the matter of deliveries or distribution to any Publisher signatory to the terms of this contract who has failed to comply with a decision, award or order of the Joint Standing Committee and/or Appeals Board.

Should the question of such assistance or the

failure to comply be controverted, such issue, if not satisfactorily adjusted, shall be submitted to the Joint Standing Committee and/or Appeals Board.

SECTION 12

Wholesalers and News Companies

12-A. To the extent permitted by law, the Publisher shall not distribute its newspapers or any of its other publications through any wholesaler or news company making distribution in any part of the Metropolitan Area, as herein defined, unless such wholesaler is under written collective agreement with the Union or is willing to enter into written collective agreement as provided for in this section.

Should a dispute arise regarding the application of this section, such dispute, if not satisfactorily adjusted, shall be submitted to the Joint-Standing Committee and/or Appeals Board.

12-B. If a dispute should arise whether a wholesaler or news company is an independent contractor, such dispute, if not satisfactorily adjusted, shall be submitted to the Joint Standing Committee and/or Appeals Board, but in no event shall a wholesaler or an owner of a news company be deemed an independent contractor if he delivers only one newspaper, though he may be delivering magazines as well, and such persons shall be deemed an employee of the Publisher publishing the particular newspaper, subject to

all of the terms and conditions hereof, present practices excepted, however.

- 12-C. Present practices with respect to the receipt by wholesalers and news companies of the newspapers of the Publisher shall continue unaltered, subject, however, to being changed in any particular respect on good cause shown and with the approval of the Joint Standing Committee and/or Appeals Board.
 - 12-D. All employees with one year or more of service as regular situation holders covered by a collective bargaining agreement between the Union and any wholesaler or news company are entitled to receive, under such agreement, certain financial benefits in the event they are laid off by that wholesaler or news company as a result of a Publisher terminating, modifying or suspending its delivery to such wholesaler or news company. In the event a wholesaler or news company fails to pay said financial benefits within 30 days of the actual layoff by said wholesaler or news company, each Publisher shall pay said benefits (unless paid by a successor wholesaler or news company) subject to the following terms and conditions:
 - 1. The notice of layoffs is given no later than 60 days following the termination, modification or suspension of the Publisher's delivery;
 - 2. Wherever the term "financial benefits" is used throughout this Section, it shall include only suspension and merger pay, payments for unused personal leave days and unused vacation, pay in

lieu of notice of lay off, and pension and welfare contributions on such personal leave days, vacation and pay in lieu of notice of lay off, as provided for in the contract between the Union and the affected wholesaler or news company.

- 3. The Publisher's liability to any one employee of a wholesaler or news company shall be limited to a maximum of:
 - (a) 40 days vacation

tion of New Tolk City.

- (b) 22 personal leave days
- (c) 10 days pay in lieu of 2 weeks notice of lay off (unless Publisher notifies Union 2 weeks prior to terminating, modifying or suspending delivery).
- (d) Pension and welfare contributions on (a), (b), and (c) above.
 - (e) 15 days suspension and merger pay.
- 4. In the event more than one Publisher is involved in the application of this Section, the liabilities shall be apportioned by the Publishers so involved.
- 5. This Section 12-D shall not apply to a Publisher who ceases doing business.
- 6. The Publisher shall not be required to pay the financial benefits already paid to covered employees by the affected wholesaler or news company.

Nothing contained in this Section shall prevent a Publisher from requiring a successor wholesaler

or news company to whom it has transferred delivery to pay the prescribed financial benefits to those employees laid off by such transfer, or from making reasonable and expeditious arrangements to require the wholesaler or news company adversely affected by its decision to terminate or suspend delivery to make such payments, provided, however, that such payments are made fully and promptly.

In the event a wholesaler or news company suspends operations or two or more wholesalers or news companies merge or consolidate, even though no Publisher has terminated, modified or suspended its delivery to one or more of the wholesalers or news companies, the Publishers then making deliveries to the successor wholesaler or news company shall endeavor to have said successor make the payments provided for in this Section 12-D, provided the wholesaler or news company primarily responsible for said payments does not make them.

SECTION 13

Wages and Vacations

13-A. 1. Effective with the day shift on March 31, 1973, wage rates for the performance of the several operations set forth in Section 2 hereof shall be as herein provided.

For all regular situation holders, Groups 1 and 2 extras, and for those Group 3 extras who

worked more than 180 days for one Publisher in the prior calendar year.

in the prior cale	endar yea	ar.		Over-	
	Hourly	Daily	Weekly	time	
Day Rates	\$6.1243	\$6.1243 \$48.382		\$ 9.1865	
Weekly Night Rates					
Short Night	6.7500	47.25		10.1250	
Long Night	6.2363	49.89	242.15	9.3545	
Saturday Night	6.7347	50.51)		10.1021	
For all other	Over-				
	Hourly	Daily	Weekly	time	
Day Rates	\$4.8337	\$38.186	\$190.93	\$ 7.2506	
Weekly Night Rates					
Short Night	5.3300	37.31		7.9950	
Long Night	4.9213	39.37	191.17	7.3820	
Saturday Night	5.3160	39.87		7.9740	

13-A. 2. Effective with the day shift on March 31, 1974, wage rates for the performance of the several operations set forth in Section 2 hereof shall be as herein provided:

For all regular situation holders, Group 1 and 2 extras, and those Group 3 extras who worked more than 180 days for one Publisher in the prior colorder year.

calendar year.	Hourly	Daily	Weekly	Over- time
Day Rates	\$6.4749	\$51.152	\$255.76	\$ 9.7124
Weekly Night Rates Short Night Long Night Saturday Night	7.1357 6.5938 7.1200	49.95 52.75 53.40 }	256.00	10.7036 9.8907 10.6800
For all others	Hourly	Daily	Weekly	Over- time
Day Rates	\$5.1843	\$40.956	\$204.78	\$ 7.7765
Weekly Night Rates Short Night Long Night Saturday Night	5.7157 5.2788 5.7013	40.01 42.23 42.76	205.02	8.5736 7.9152 8.552

13-A. 3. Cost of Living Allowance: On the anniversary date of the contract, March 31, 1974,

employees covered hereunder shall receive a cost of living adjustment to the scheduled wage increases in accordance with the following formula:

- (a) The Bureau of Labor Statistics Consumer Price Index (1957-1959=100) for New York City, hereafter called the Index, shall be used for all measurements of the change in cost of living.
- (b) Effective March 31, 1974, the amount of any cost of living adjustment shall be the percentage increase in excess of 6% in the Index for May 1974 over May 1973 (as reported in June each year) multiplied by the day scales, and the resultant amount shall be added to the day scales.

The amount of any Cost of Living Adjustment shall be included in computing all premiums and fringes such as pension and welfare contributions, overtime premium, night shift premium, vacation payments, holiday payment, death leave pay, paid leave, etc.

In no event will a decline in the Index cause a reduction in the scale of wages or in any ad-

justment thereto.

In the event that the Bureau of Labor Statistics shall fail to publish the Index or shall change its base period, the parties shall meet to discuss and apply any such new index and its application to the cost of living allowance. If the parties are unable to agree, then the same shall be referred to arbitration.

13-A. 4. In the event the Federal Government establishes a program of wage controls during

the term of this Contract and should such program prohibit, nullify or reduce any scheduled wage increase provided for employees during the term of this Contract the Union shall have the right to terminate this contract as of the date such wage increase is scheduled to become effective.

13-B. Vacations. Employees shall receive vacations based on work performed in the preceding calendar year in accordance with the following schedule:

		,					V	acation Days
More than	6	days	but	less	than	20	days	1
More than	19	days	but	less	than	32	days	2
More than	31	days	but	less	than	44	days	3
More than	43	days	but	less	than	56	days	4
More than	55	days	but	less	than	68	days	5
More than	67	days	but	less	than	80	days	6
More than	79	days	but	less	than	92	days	7
More than	91	days	but	less	than	101	days	8
More than	103	days	but	less	than	116	days	9
More than	115	days	but	less	than	128	days	10
More than	127	days	but	less	than	140	days	11
More than	139	days	but	less	than	152	days	12
More than	151	days	but	less	than	164	days	13
More than	163	days	but	less	than	176	days	14
More than	175	days	but	less	than	188	days	15
More than	187	days	but	less	than	200	days	16
More than	199	days	but	less	than	212	days	17
More than	211	days	but	less	than	224	days	18
More than	223	days	but	less	than	225	days	19
More than	22	4 day	7S					20

Such vacation credit shall be earned when an employee is working on a situation as a regular or extra employee. The spirit and purpose of this provision is to disallow the duplication of vacation credits on the same situation. Days during sick leave shall be included in the schedule of days worked for which vacations are allowed. The words "sick leave" as used herein shall include time lost by reason of any illness or accident subject to the provisions of either the Workmen's Compensation Act or the Publishers'-Newspaper and Mail Deliverers' Welfare Fund; and such waiting periods as contained therein shall be counted as days worked, but in no event shall such period of disability in excess of thirty (30) weeks in the case of sickness or fifty-three (53) weeks in the case of accident, both periods including the waiting period, be counted as time worked for the purpose of vacation credits. Time spent on duty with the National Guard or on Reserve Duty shall be included in the days worked for which vacations are allowed, to a maximum of two weeks. Holidays shall be included in the days worked for which vacations are allowed. Days of vacation are not to be counted as work days. The vacation schedule shall be arranged at the convenience of the employer, but on the basis of seniority. The days of the vacation period shall be consecutive. The Union offers, if called upon, to supply men to the employers to cover the period for which vacations are allowed, who may be employed at straight-time rates. Employees receiving vacations will not be allowed to work during

the vacation periods; and an employee who works during vacation period shall not be entitled to vacation pay.

Present practices concerning the splitting of vacations shall be continued.

In no case, except when a holiday falls during a vacation period, shall an employee receive more than twenty (20) days' vacation in a calendar year in any one office. When a holiday falls within an employee's vacation period, he shall be given a day's pay at straight time rates for his holiday. When a regular situation holder returns from vacation he shall work his regularly scheduled work week.

The provisions for vacations established herein shall be effective with vacations given in the calendar year 1973 for work performed in 1972, in the calendar year 1974 for work performed in 1973, and in the calendar year 1975 up to the termination date of this Agreement for work performed in 1974.

A day spert in required attendance at a hearing of the Workmen's Compensation Board shall be counted as time worked for the purpose of vacation credits, provided that the employee submits to the foreman a certificate giving proof of such attendance, and provided further that there shall be no duplication of vacation credits as a result of the operation of this paragraph.

13-C. No employee employed by any Publisher in the performance of any work lying outside the operations set forth in Section 2 hereof performed

under the jurisdiction of a foreman, shall be compensated at less than the hourly wage rates fixed herein for routemen.

13-D. All overtime shall be compensated at a rate of one and a half times the regular hourly rate and shall be computed in five-minute periods.

13-E. Employees engaged in the performance of any of the operations set forth in Section 2 hereof for any Publisher and being compensated at a rate in excess of the regular rate established at the time immediately prior to the execution hereof shall, so long as they continue employed at such operation by such employer, receive compensation at a rate which shall have the same relation to the regular rate fixed herein as their present rate of compensation bears to the regular rate established immediately prior to the execution hereof. Such excess rate shall not be deemed to be attached to the several positions held by such employees, but shall be deemed personal to them.

Any agreement which any Publisher made at any time subsequent to January 20, 1943, for compensating the performance of any of the operations set forth in Section 2 hereof at a rate in excess of the regular rate fixed herein shall be subject at all times to the control of the Publisher involved and may at any time be modified or abrogated in whole or in part by such Publisher.

13-F. The Publisher who makes collections on a weekly basis (other than those now billing through the auditing department) shall have the

option either to employ a special crew of regular situation holders for such purpose or to have the routemen on the several routes collect their own respective routes, in which latter case each such routeman shall receive two (2) days' pay for such collection.

13-G. The matter of excessive or repeated shortages may be made the subject of a complaint by the Union, and in the event any such complaint is not satisfactorily adjusted between the Union and the Publisher involved, such complaint shall be submitted to the Joint Standing Committee and/or Appeals Board for investigation and with the power to grant such relief as it may deem proper, including an allowance not, however, to exceed one-half of one per cent of the total papers handled by the particular employee complaining of such shortages.

13-H. The Publisher agrees that it shall contribute 6.0% of each employee's rate per shift for each shift worked by each employee in the bargaining unit to the Publishers'—Newspaper and Mail Deliverers' Welfare Fund, but not in excess of five (5) shifts in any payroll week in any one office for any one employe. It is further agreed that any Publisher delinquent in the contributions to said fund required to be paid under this or any previous collective bargaining agreement shall pay such delinquent contributions and shall reimburse the fund for any expense incurred by the Trustees in the collection thereof through the Adjustment Board or otherwise as the Trustees determine. Such payments shall be made on the basis of

weekly employment and shall be made at least once a month, unless the Trustees of the Fund determine that more frequent payments are necessary in the case of any Contributing Employer.

Any increase in the employee's contribution above 30¢ per week required by law for Statutory DBL benefits will be borne by the employer.

With respect to this Fund, the term "employee" shall include any individual whose retirement was recognized by the Trustees subsequent to any date on which his employer commenced the payment of contributions in his behalf.

Payments to this Welfare Fund shall be permitted and accepted from daily newspaper Publishers not presently signatory to this Agreement, from other employers of individuals working under provisions substantially the same as those of this Agreement, and from the Union for its officers and employees, provided such payments shall be made on the same basis as herein provided.

13-I. The Publisher agrees it shall contribute 6.0% of each employee's pay rate per shift for each shift worked by each employee in the bargaining unit to the Newspaper and Mail Deliverers'—Publishers' Pension Fund, but not in excess of five (5) shifts in any payroll week in any one office for any one employee. It is further agreed that any Publisher delinquent in its contributions to said Fund required to be paid under this or any previous collective bargaining agreement shall pay such delinquent contributions and

C the mornion Importial Chairman

shall reimburse the Fund for any expense incurred by the Trustees in the collection thereof through the Adjustment Board or otherwise as the Trustees determine. Such payments shall be made on the basis of weekly employment and shall be made at least once a month, unless the Trustees of the Fund determine that more frequent payments are necessary in the case of any Contributing Employer.

Payments to the Trust Fund hereinabove mentioned shall be permitted from daily newspaper publishers not presently signatory to this Agreement, from other employers of individuals working under provisions substantially the same as those as set forth herein and, to the extent that the Trust Agreement may so provide, from the Union for its officers and employees, provided, in each case, that such payments shall be made in the same amounts and on the same basis as herein set forth.

13-J. A regular situation holder and Group I extra covered by this Agreement with at least six (6) months of priority in the shop as a Group I extra or regular situation holder who is required to report for jury service on a day when he normally would have been scheduled to work shall be paid for a maximum of fifteen (15) days of such jury service the difference between the fee received for such service and a regular shift's pay at straight-time rates. To become eligible for such payment the employee must inform his foreman in writing of the call to jury service within

twenty-four (24) hours of receipt of the official notification, and then must furnish to the foreman a statement of jury service from the clerk of the court.

13-K. 1. An employee covered by this Agreement shall receive up to ten days of paid leave for illness or personal reasons based on work performed in the preceding calendar year in accordance with the following schedule (days to be counted as provided in Section 13-B):

									Days of	
									Leave	
More	than	33	days	but	less	than	76	days	2	
More	than	75	days	but	less	than	118	days	4	
More	than	117	days	but	less	than	160	days	6	
More	than	159	days	but	less	than	202	days	8	
More	than	201	day	s					. 10	

13-K. 2. If an employee has not taken in any calendar year all or part of the leave to which he is entitled under this Section because of work performed in the preceding calendar year, he shall receive on the payday of the first pay period in December a cash payment for the days not taken.

Days of paid leave taken or not taken but paid for during the year under this Section shall be included in the schedule of days worked for which vacations and days of paid leave are allowed and for which welfare and pension contributions are made.

When a holiday occurs during a period of paid leave and the employee is entitled to a holiday payment, the holiday shall not be counted as a day of paid leave.

Time spent on duty with the National Guard or on Reserve Duty, shall be included in the days worked for which paid leave is allowed, to a maximum of two (2) weeks.

SECTION 14

Discharge

14-A. The right of the Publisher, acting through a foreman or an assistant foreman at any time to discharge any employee for cause is hereby recognized. The cause shall be stated at the time of the discharge. Upon demand, the foreman shall also give the reason for discharge in writing within seventy-two (72) hours. Following the demand, the discharged employee may, through his Union representative, make complaint with respect to his discharge to the Publisher and if such complaint be not satisfactorily adjusted, it may be submitted to the Joint Standing Committee and/or Appeals Board. Pending adjustment and determination of such complaint the discharged employee need not be kept in employment by the Publisher.

14-B. Where physical incapacity is the cause of discharge, the Publisher concerned shall make every effort to place such discharged employee at some other operation for which such employee may be qualified and to that extent the provisions herein contained with respect to priority and seniority shall be modified.

14-C. Where the cause for discharge is a bad driving record, the Publisher concerned shall make every effort to place the discharged employee at some other operation not requiring the driving of an automobile, and to that extent the provisions herein contained with respect to priority and seniority shall be modified.

SECTION 15 Grievances

Any employee claiming to have been discharged without just cause or otherwise deprived of or injured with respect to any of the rights conferred upon him hereunder may have such claim taken up on his behalf with his employer through the appropriate Union representatives, and in the event such claim is not satisfactorily adjusted, the Union may submit the same to the Joint Standing Committee and/or Appeals Board.

SECTION 16

Joint Standing Committee and Appeals Board

- 16-A. All grievances, differences and disputes arising out of the interpretation or application of this agreement which cannot be settled at the plant level are to be referred, as hereinafter provided, to the Joint Standing Committee and/or the Appeals Board for adjudication.
- 16-B. The parties hereto hereby create a Joint Standing Committee which shall consist of two (2) members designated by the Union and two (2)

members designated by the Publishers' Association of New York City. Immediately after the effective date hereof, the parties hereto shall, in writing, designate their respective members of the Committee and shall have the right, without notice, from time to time to change such designations and/or to designate substitute members.

- 16-C. The Joint Standing Committee shall have full and complete authority, in accordance with the provisions of this section, and any decision when reduced to writing and subscribed to by a majority of the members of the Committee shall be binding upon the parties hereto and shall be enforceable as an arbitration award in any court of competent jurisdiction. The Joint Standing Committee shall have no more than two (2) weeks after the submission of any matter to the Committee to reach a decision with respect to the submitted issue and to take action thereon.
- 16-D. In the event that the Joint Standing Committee is unable to resolve the issue, or fails to act within two (2) weeks after submission, the matter shall then be automatically referred to the Arpeals Board which shall consist of the four (4) n mbers of the Joint Standing Committee and a chairman who shall be selected in accordance with the procedure hereinafter set forth.
- 16-E. 1. Immediately after the execution of this Agreement, the parties hereto shall meet to select an Impartial Chairman who shall serve commencing with the date of his appointment for the duration of the Agreement. In the event

that the parties fail to designate an Impartial Chairman within twenty-one (21) days after the signing of this agreement, the Impartial Chairman shall be selected from a list supplied by the American Arbitration Association in accordance with its then controlling rules and regulations governing such selection.

- 16-E. 2. In addition to the Impartial Chairman to be designated as provided in Section 16-E. 1 of this agreement, an Alternate Impartial Chairman shall be designated in the same manner. The Alternate Impartial Chairman shall become the Impartial Chairman in the event that the incumbent Impartial Chairman is incapacitated or otherwise unable or unwilling to serve. In the event the Alternate Impartial Chairman so becomes the Impartial Chairman (except for a period which the parties mutually declare to be a temporary period, e.g.; hospitalization of the incumbent), then the parties at once shall follow the procedures of Section 16-E. 1 to name a new Alternate Impartial Chairman.
- 16-F. The chairman and any two other members of the Appeals Board shall constitute a quorum thereof for all purposes. The absence of any member or a vacancy on the Board shall not preclude the Appeals Board from making a decision and taking action on any matter so long as such quorum is present.
- 16-G. The Appeals Board shall render its decision within five (5) days after final submissions of all evidence to it except upon the consent of

both parties. The term of the chairmen herein designated shall terminate upon the expiration of this agreement. Any case then pending before the Appeals Board which has not been decided shall be referred by the parties to the Appeals Board created by the next succeeding contract.

16-H. In addition to the Joint Standing Committee and Appeals Board herein created, there shall be an Adjustment Board consisting of two (2) members designated by the Union and two (2) members designated by the Publishers' Association of New York City, which shall have exclusive jurisdiction over any issue arising with regard to the provisions of Section 4-A of this agreement. The decisions of a majority of said Adjustment Board shall be binding upon the parties hereto and shall be enforceable as an arbitration award in any court of competent jurisdiction. In the event the Adjustment Board is unable to reach a decision, the matter shall be referred to the Appeals Board in the manner prescribed.

- 16-I. The Adjustment Board, the Joint Standing Committee and the Appeals Board may from time to time make, modify, repeal, supplement and amend rules governing their respective procedures, and no record need be kept of any proceeding unless the Committee or Boards otherwise determine pursuant to their own rules.
- 16-J. Failure of any party involved to appear before the Adjustment Board, the Joint Standing Committee or the Appeals Board after written notice of not less than three (3) days shall not

preclude the Adjustment Board, the Joint Standing Committee or the Appeals Board from considering the case and from making a decision thereon.

16-K. A majority of the Adjustment Board, Joint Standing Committee and/or Appeals Board shall have the power to make all appropriate findings, decisions and awards in any and all matters submitted to it pursuant to the provisions of this agreement and to take or to direct the taking of any action which it may deem necessary or proper to make effective the provisions and the intent hereof and to safeguard the rights of the parties hereto. The power, as herein created, shall include, but shall not be limited to, the reinstatement of any employee found to have been improperly discharged or discriminated against with or without back pay in such amount as the Committee or Board may order and with or without the restoration to prior status, the power to impose damages either in the form of actual or liquidated damages against any party hereto found guilty of a violation of any of the terms, conditions or provisions of this agreement.

16-L. Neither the chairman nor any member of the Joint Standing Committee or Adjustment Board need take an oath of office as arbitrator or otherwise and the requirements therefore are hereby expressly waived.

16-M. With the exception of a layoff, as hereinbefore provided in Section 3-D, and except in case of discharge of employees, no change in condition shall be put in effect by either party to this contract without the prior consent of the other. In the event that such change is placed in effect, either party may file formal written demand for a hearing before the Appeals Board without resort to the Joint Standing Committee and said Appeals Board shall be convened immediately and hear and determine the issue within two (2) weeks from the date of the filing of such demand.

In the event a change shall have been made and shall have been in effect for a period of more than thirty (30) days, then the change may be continued in effect pending a determination by the Appeals Board. If the change has not been in effect for more than thirty (30) days, the Union, immediately after filing written notice, may request the chairman designated to serve on the Appeals Board to direct the Publisher who has made the change to discontinue it and to restore the prior existing conditions pending a full hearing by the Appeals Board and its determination, and the Publisher upon receipt of such notice from the chairman shall thereupon immediately restore the prior existing conditions.

16-N. No strike, lockout or other cessation of work or interference therewith shall be ordered or sanctioned by any party hereto during the term hereof except as against the party failing to comply with a decision, award or order of the Joint Standing Committee, the Adjustment Board or the Appeals Board.

16-O. The fees of the chairmen and such expenditures as may be incurred by them in the

performance of their duties shall be borne equally by the Union and the Publishers' Association of New York City.

SECTION 17

Mutual Guarantees

Because of the enactment of the Labor-Management Relations Act, 1947, this contract differs from contracts between these parties over a period of many years. Specifically, this agreement eliminates closed shop, and references thereto because it no longer is permissible under the federal law. This provision is appended hereto as an appendix to, but not as a part of this contract.

It is understood and agreed, however, for the duration of this contract, that if any provision as shown in this appendix hereto, and as modified from the preceding contract or excluded from this contract solely because of the restrictions of law, no longer is held to be inoperative, either by legislative enactment or by decision of the court of highest recourse, then such provision automatically shall become a part of this contract, to the extent permitted, and be in force and effect as though it had been originally made a part hereof.

To the best knowledge and belief of the parties this contract now contains no provision which is contrary to federal or state law or regulation. Should any provision of this contract, at any time during its life, be in conflict with federal or state law or regulation by reason of the passage of any statute, rule, or regulation after the execution of this agreement, or by reason of any decision, ruling or decree by any tribunal of competent authority made after the execution of this agreement, then such provision shall become inoperative, either upon agreement by the parties that such conflict exists, or upon a determination to that effect by the Appeals Board. A dispute with respect to the legality of the provision will be subject to arbitration in accordance with the procedures outlined in Section 16 of this contract. In the event that any provision of this contract thus becomes inoperative, the remaining provisions of the contract shall, nevertheless, remain in full force and effect. Either party shall have the right to serve a written request upon the other party to renegotiate on the subject matter of the inoperative provision, so as to conform it to the law. In the event the parties cannot reach agreement, the subject matter of the inoperative provision may be referred by either party to the Appeals Board.

It is mutually agreed that the spirit as well as the letter of this agreement is to be observed in full and that neither party will enter into any other agreement which in any way renders impossible or inoperative any provisions of this contract.

The parties hereto agree that they have fully bargained with respect to wages, hours, and other terms and conditions of employment and have settled the same for the term of this agreement in accordance with the terms hereof.

SECTION 18

Suspension and Merger Pay

In the event of merger, consolidation, or permanent suspension by any newspaper covered by this agreement all regular situation holders with one (1) year or more of service as regular situation holders who by virtue of the merger, consolidation, or permanent suspension are deprived of regular situations shall receive the cash equivalent of eight weeks (40 shifts) pay at their current rate in addition to any accumulated vacation credits or any other money due them.

SECTION 19

Termination and New Agreement

This Agreement was negotiated individually with the Publisher of The Times, The News and The Post and shall be treated by the Union and each such Publisher as an individual agreement between them. It shall be in force for a period from the beginning of the day shift on March 31, 1973, and shall continue in full force and effect up to an including March 30, 1975, subject to the following provisions:

(a) Seventy-five (75) days prior to the expiration date of this contract either party may give to the other party written notice of its desire to change the contract, along with such changes as it may wish to have made. After the giving of such notice immediate endeavors shall be made

to negotiate a new contract. If agreement has not been reached by a date thirty (30) days prior to the expiration date of this contract then by mutual consent the parties may invite a representative of the New York State Board of Mediation or of the Federal Mediation and Conciliation Service, or both, to participate in the remaining days of negotiation.

(b) The giving of notice seventy-five (75) days prior to the expiration date rather than sixty-five (65) days prior to the expiration date is in the hope that the parties may arrive at an agreement for a succeeding contract two (2) weeks prior to the expiration date, thereby allowing time for submission to and ratification by the parties hereunto.

MEMORANDUM

In regard to payment for unused paid leave days, if an employee has not taken off all his paid leave days, then he shall receive in lieu thereof for his unused paid leave days pay at his normal straight-time weekly pay. In the event that an employee has taken off some of his leave days and is to receive a cash payment for the balance, then the cash payment will be at the rate he receives for the majority of his shifts.

MEMORANDUM

Clerical Work: A joint study will be undertaken by each publisher and the Union during the term of the new agreement to define the types of cleri10 minutes rener per suburban truck will be

cal work which are appropriate to the Deliverers' bargaining unit.

MEMORANDUM (News)

The Union will instruct Daniel House (or his successor) to pay to The News \$14,000 from the Escrow Fund upon ratification of the new Agreement in settlement of all damage and escrow claims made to date.

The Escrow Agreement will extend to March 30, 1975, and the Union agrees to pay to the Escrow Fund \$1,000 per month on the first of each month following ra* until March 30, 1975.

MEMOR.

If a Group 1 man takes a conduring a period when a holiday occurs at a the man qualifies under Section 7-D of the contract (discounting the vacation period before or after the holiday) he is entitled to holiday pay in accordance with Section 13-B (fourth paragraph); provided, the Foreman has the option to schedule vacations at his discretion using seniority to determine the order in which the men go on vacation.

MEMORANDUM (News)

Any questions arising out of changes in the deliveries of black and white Sunday Sections which are subject to arbitration under ation holders listed above will continue unchanged

the contract and which are submitted to arbitration will be submitted to Theodore Kheel instead of the regular Impartial Chairman.

MEMORANDUM (News)

The News agrees that when it is printing on its own present press equipment a black and white all-advertising section for insertion at the Newspoint Plant it will also distribute for the same issue date what are currently known as Section 2 (Living) and Section 3 (Leisure) for Nassau, Suffolk and Queens; and Section 2 (a combination of the Living and Leisure Sections) for Kings, Manhattan, Bronx, Westchester, Staten Island and New Jersey.

Furthermore, for the issues involving Washington's Birthday, Memorial Day and Columbus Day, The News will not insert such a black and white all-advertising section for distribution in any area unless it is also distributing a third section (Section 3—Leisure) for that issue in that area.

Provided further, for a period of nine (9) months, ending on June 30, 1974, The News will not insert such a black and white all-advertising section for distribution in Kings unless it is also distributing a Section 3 (Leisure) in Kings for that same issue. During the first succeeding three (3) months, July, August and September 1974, this limitation shall not apply; during the second succeeding three (3) months, October, November and December 1974, this limitation

shall apply; and, during the third succeeding three (3) months, January, February and March 1975, this limitation again shall not apply.

This Agreement ends effective March 30, 1975.

MEMORADUM (News)

- (1) New York Color Room Clerks (Korn, McGuiness, Rossi and Lynough) will receive 3 additional hours of overtime per man per week when the regular roto is 75, 60, 50, 40 or fewer copies per load or when there is an extra roto or rotos or when both conditions exist in the Manhattan Plant.
- (2) At 148 or more pages per copy, black and white, all News truck (except Pallet trucks) will carry no more than 240 loads.
 - (3) Franchise Operation:
 - a) No franchise dealer will make delivery to another franchise dealer.
 - b) There will be no reduction in the present number of a.m. routes as a result of home delivery. There are now 128 a.m. routes in New York and Brooklyn plants.
 - c) The home delivery routemen will make up the odds on the black and white, including writing of wrappers for the odds.
 - d) Starting time of franchise routemen to be no later than 12 midnight. Union

to send letter that it will meet to resolve a problem of overtime at Newspoint on Franchise runs if, under normal operation, one arises due to this paragraph.

- e) Home delivery runs will not service any dealers other than franchise dealers.
- f) Three new franchise jobs (one with collections and Saturday and Sunday off) will be established in the Manhattan Plant.
- g) Except as provided in the Newspoint Agreement, tailmen will be used when the number of loads on a truck exceeds 180 loads. This applies to all load sizes (black & white, comic and roto, mains, supplements or combinations of the foregoing).
- h) The union agrees to lift the prohibition against splitting a franchise dealer's order on more than one truck.
- (4) Bindery Operation Transport men hired according to need.

MEMORANDUM (News)

Newspoint Rotogravure/Insert Plant

I. Load, Dealer, Tailman and Recovery Schedules for Direct Delivery Routes

A. Schedule for all areas except Suffolk County, Franchise Runs and Recovery Runs:

P	Papers er Load	Maximum Loads wit	Number of h a Tailman		Number ealers
150 o	or more	150	loads	90	dealers
100 p	papers	185	loads	90	dealers
75 p	papers	220	loads	85	dealers
50 p	papers	250	loads	80	dealers
40 p	papers	275	loads	65	dealers
less t	han 40	306	loads	55	dealers

Tailmen will be employed on all runs covered by this Schedule "A" except for recovery runs.

B. Schedule for Suffolk County:

Papers Per Load	Maximum Number of Loads Without a Tailman*
150 or more	100 loads
100 papers	125 loads
75 papers	140 loads
50 papers	155 loads
40 papers	170 loads
less than 40	180 loads

C. Schedule for Franchise Runs:

Papers Per Load	Maximum Number of Loads Without a Tailman*
150 or more	140 loads
100 papers	150 loads
75 papers	175 loads
50 papers	200 loads
40 papers	220 loads
less than 40	240 loads

^{*} If these schedules are exceeded then Schedule "A" will apply.

D. Schedule for Recovery Runs:

Recovery runs (runs which recover shortages and/or serve dealers who are closed on their regular delivery day) shall not exceed 100 loads on a truck unless a tailman is employed.

E. Present practice with respect to running time will continue to apply to routemen and to tailmen when employed.

II. Schedules for Mail Runs and Inter-Plant Shipments

A. When pallet trucks are not used a maximum of 250 loads shall be placed on a truck.

B. When pallet trucks are used present practice will be continued.

III. Manning (Day side, double out only)

- a) 1 man (journeyman) in the console room.
- b) 1 man on each card reader/wire machine when running direct delivery.
- c) 3 general floormen to be used when and where needed as directed.
- d) 1 man for hi-lo/offloading work.
- e) 5 men for dispatching, gassing trucks, etc.
- f) 1 office clerk.
- g) Loaders will be employed as follows: 50 or more papers per load—4 men per stacker line.

Less than 50 papers per load—5 men per stacker line.

Loaders may be rotated with other delivery personnel, but there will be the above specified numbers of men at the loading positions of a stacker line whenever trucks are being loaded at said positions. When said loading positions are not being used or when they are "down" the loaders for these positions may be assigned to floor work, mail runs or inter-plant deliveries only.

IV. Lunch Period and Coffee Breaks

A 45 minute lunch period and two 15 minute coffee breaks (one in the morning and one in the afternoon) shall be provided and shall be scheduled by the Foreman. It is understood that if the requirements of the operation necessitate it, the lunch period or coffee breaks may have to be "worked" and will be compensated as provided in Section 5N of the Agreement.

V. Commercial Work

Commercial work printed but not inserted at Newspoint shall be handled as follows:

- a) work which is destined for delivery to locations within the continually designated "territorial coverage" of the Union shall be delivered to such locations by employees covered by the Agreement between the Union and The News.
- b) work which is destined for delivery to locations outside the contractually designated "territorial coverage" of the Union shall be

delivered by employees covered by the Agreement between the Union and The News to points designated by The News. The location of said points will be in line with current policy.

c) It is agreed the "extra crew" requirements of Section 3-L of the contract between the Union and The News are not applicable to the tying or to any in-plant handling of commercial work at Newspoint.

VI.

The 58 men employed on the day side as of August 17, 1973 (names attached in Appendix A) will continue to be employed on the day side. This is not to be interpreted as a guaranty of 58 day jobs at The News nor is it to be interpreted to deprive the Union of the right to maintain that any job vacated by any of the 58 men shall be retained on the day side.

VII.

Any additional situations created at Newspoint shall be posted in accordance with Section 4 of the Agreement.

VIII.

This Agreement supersedes and replaces all other agreements, memoranda or practices which would otherwise relate or be applicable to the Newspoint operation except as otherwise stated herein.

MEMORANDUM (Post)

During the negotiations, the Publishers proposed that the hours of the day shift on Saturdays be changed to begin at 5:00 a.m. The Union stated that it was agreeable to the requested change previded that all other unions who would be affected by the proposed change would agree to the change, namely the Mailers, Pressmen, Stereotypers and Paper Handlers. The union further stated that it would support the change in any discussions with these unions. It was also agreed that the change in the Pension Plan on behalf of former World-Journal-Tribune employees was given by the Publisher in return for the above understanding.

MEMORANDUM (Post)

The car routemen's car allowance shall be increased by \$1.00 per day retroactive to February 1, 1973. The Publisher and the Union shall submit the matter of car routemen's car allowance for the period February 1, 1974 to January 31, 1975 to E. J. Ames for determination of the increase in the car routemen's allowance, if any, for said period. In making his determination, Mr. Ames shall consider the amounts of the increase in costs since February 1, 1972 and shall offset against such increased costs the \$1.00 per day increase granted as of February 1, 1973.

MEMORANDUM

New York Post Pension Plan

The New York Post will establish the following Pension Plan effective upon ratification of the collective bargaining agreement.

- 1. Employees covered by the agreement who have 25 or more years of continuous service with the New York Post will receive a monthly pension benefit of \$50.00 per month upon retirement at or after age 65.
- 2. Employees covered by the agreement who have 15 or more years of continuous service but less than 25 years of continuous service with the New York Post will receive a monthly pension benefit of \$2.00 multiplied by the years of service, upon retirement at or after age 65.
- 3. An employee who retires at or after age 60 but before age 65 with 15 or more years of continuous service will receive a monthly pension benefit as provided in paragraphs 1 and 2 reduced by 5/9 of 1% for each month by which his age at retirement is less than 65 years.
- 4. An employee who has 15 or more years of continuous service and who becomes totally and permanently disabled at or after age 50 will receive a monthly pension benefit of \$2.00 multiplied by his years of continuous service (not exceeding 25 years) at the date of retirement because of total and permanent disability. An employee shall be deemed to be totally and permanently disabled if he is entitled to and is

receiving disability benefits under the Social Security Act.

- 5. The term continuous service shall mean:
- (a) For periods prior to March 31, 1970 the service reflected by the employee's priority date as shown as the current priority list and
- (b) For periods beginning April 1, 1970 ¼ year's credit for each 52 shifts worked or paid for in each calendar year with a maximum of 1 year's credit in any calendar year.
- (c) An employee shall also be credited with service for periods of
- 1) Military service provided he returns to work following the completion of his military service within the time prescribed under the Military Selective Service Act of 1967 and provided he does not voluntarily extend his military service beyond the date he would be entitled to leave such service. Military service shall include service as defined in the Military Selective Service Act of 1967, including the National Guard.
- 2) Periods of absence due to sickness or accident for which the employee receives benefits under the New York Disability Benefits Law or Workmen's Compensation Act, including the waiting period.
- 3) Periods of absence in the performance of duties as a member of a committee of the Union.
- (d) An employee's continuous service shall be broken and previous pension credits lost when he loses his priority standing at the Post or when his employment is terminated.

- 6. Pension benefits hereunder shall be payable on and after the date of contract ratification. An employee planning to retire hereunder shall submit a written application to the New York Post three months prior to the intended date of retirement on a form provided by the Employer. Pension benefits to employees eligible hereunder shall be retroactive to the first month that begins after such written application is submitted provided the employee has retired on or before the beginning of such month. If he has not then retired, pension benefits shall begin with the first month after he has retired.
- 7. Pension benefits payable hereunder shall terminate upon the death of the retired employee. Pension benefits shall not be payable in any month during which the pensioner works for the employer. In the case of an employee receiving a disability pension, pension benefits shall be suspended when he ceases to be totally and permanently disabled as defined herein. Upon his reemployment the period of disability will not constitute a break in service but no credits shall accrue during such period.
- 8. The Pension Plan will not be funded. Payment of benefits will be made from the general funds of the New York Post to employees as they become eligible for benefits.
- The Pension Plan will not be terminated or modified during the life of the collective bargaining agreement without mutual consent.
 - 10. Any dispute concerning the application or

meaning of this Pension Plan shall be settled under the rules of the American Arbitration Association.

MEMORANDUM

New York Post Unfunded Pension Plan

Effective March 31, 1974 an employee of the New York Post covered by the collective bargaining agreement shall be eligible for a pension under the New York Post unfunded pension plan, provided he meets the following conditions:

- 1. He was an employee of the World-Journal-Tribune covered by the contract between the NMDU and the WJT at the time the WJT permanently ceased publication on May 4, 1967.
- 2. He became an employee of the Post directly after the World-Journal-Tribune ceased publication without having been employed as an employee elsewhere and has worked at the Post continuously since that time.
- 3. His combined continuous service with the World-Journal-Tribune and one or more of its predecessor papers (the Herald Tribune, the Journal-American or the World Telegram) and the Post totals at least twenty-five years.
- 4. He has attained the age 65 or becomes totally and permanently disabled at or after 50 and he meets all of the eligibility requirements of the pension plan except the requirement of a minimum of fifteen years of service.

An employee who meets all of the foregoing provisions will receive a pension of \$2.00 per month for each year of service at the Post only, with a maximum of \$50.00 per month.

MEMORANDUM (Times)

Vacation checks shall have tax deductions made at the same rate as the deductions made on weekly checks. On those ccasions when the taxes deducted are in excess of the normal weekly deduction, the payroll department, on request, within 24 hours shall issue a cash voucher representing the amount of the over-deduction.

MEMORANDUM

In connection with the New York Times, it is understood:

Combos and 5/3 sheets will be "kicked off" in variables of five. The Sunday completes will be continued to kick off as heretofore.

Airport pick-up of the International Edition of the New York Times will be under the jurisdiction of the NMDU.

Upon installation of new conveyor equipment the Times and the Union will observe the new conveyor system to determine manpower requirements.

Relief Item: Effective with the ratification of the contract by the Union: 20 minutes relief per trailer or part thereof will be provided.

15 minutes relief per suburban truck will be provided.

15 minutes relief per mail bag truck will be provided.

Disputes arising out of the interpretation and application of the above concerning relief will be brought to Mr. Theodore Kheel for decision.

MEMORANDUM

In connection with the New York Times:

MEN AT STATION

- 1. Six situation holders (H. Abbott, H. Imowitz, A. Romeo, McNamara, J. Partridge, W. Tafuri) hold situations an element of which is handling baggage at Grand Central Station on Saturday. As the new over-the-road procedures are put into force, the need for handling baggage at Grand Central Station will be reduced. As such work drops off, the assignments of these men will be changed as follows:
- 2. Of the six regular situation holders listed above, the Union will designate two by name whose situations will continue in their present form during the term of this Agreement; and, if either of those so named situation holders vacates his situation during the term of this Agreement, a replacement will be named; and the situation so filled by that replacement will continue in its

present form during the term of this Agreement.

- 3(a) The situations of the remaining four situation holders listed above will continue unchanged during the term of this Agreement except that: if any of those four named situation holders vacates for any reason his situation during the term of this Agreement, that situation will cease to exist in its present form and instead will become a floor situation.
- 3(b). As of the last day of this Agreement any of those four situations not vacated during the term of this Agreement will be changed to floor situations; and any of the four named situation holders still in those situations as of the last day of this Agreement thereafter will fill such floor situations.
- 4. No extra men will be assigned to handle baggage at Grand Central Station on Saturdays unless there is baggage-handling work there for them to do.

MEMORANDUM

In connection with the New York Times:

BUNDLE SCHEDULE

The Times will issue a new bundle schedule showing the following changes from the schedule now in use:

- 1. Page sizes 92 and 96 will be loaded 340 bundles per truck.
 - 2. Bundles of daily papers issue dates Monday

through Friday weighing 42 pounds or more will be loaded 272 bundles per truck.

3. Trailers, whether carrying combos or black-and-white sheets, will be loaded to a maximum of six high. The black-and-white loading schedule will be: bundle weight of 37 to 47 pounds, five high; bundle weight of less than 37 pounds, six high. On Saturday nights on black-and-white sheets the maximum of six high may be exceeded in the case of a reasonable number of bundles to facilitate efficient loading.

MEMORANDUM

During the negotiations leading to the Agreement between the Times and the Union effective March 31, 1970 a committee representing the Times and the Union reached certain decisions regarding the interpretation of Section 2-E. 2 as it affects the Times. These decisions relate to the future; they are prospective. Until they are in force Section 2-E. 2 as written in the Agreement will continue to apply to all existing runs; and the status quo of each existing run until and if it is phased out will be maintained in all details such as, for example, the present location of transfer points. These decisions are:

POINT ONE

Section 2-E. 2 as it appears in the main body of this Agreement applies to the Times and the Union fully, except as to such modifications as are described in this letter.

POINT TWO

Paragraph (e) will be construed as if it reads as follows:

- (i) During the term of this Agreement the Times will begin to apply the principle that all over-the-road trucking now being done by common carrier will be done by employees covered by this Agreement, except for those common carrier runs which extend for more than 250 miles from Columbus Circle or which have more than two stops.
- (ii) A run which because of the exceptions provided in Sub-Paragraph (i) or this Paragraph (e) is not driven by an employee covered by this Agreement will be driven to a transfer point by an employee covered by this Agreement. A transfer point is a location where the trailer is unhooked and picked up by a tractor driven by a person not covered by this Agreement or where the newspapers in the trailer are unloaded and carried away in trucks driven by persons not covered by this Agreement. The location of such a transfer point will be selected by the Times, subject to the agreement of the Union. If no such agreement is had, the issue will be considered a dispute under Section 16 of this Agreement.
- (iii) In selecting such a transfer point in the case of a run, excepted by Sub-Paragraph (i), extending more than 250 miles from Columbus Circle, the Times will pick a location, more than 150 miles from Columbus Circle, but no such transfer point will be farther from Columbus

Circle, except at the choice of the Times, than the destination point of the papers carried.

- (iv) In selecting a transfer point in the case of a run, excepted by Sub-Paragraph (i), which has more than two stops, the Times will pick a location which is no farther from Columbus Circle than 150 miles but no nearer to Columbus Circle than any transfer poir in use as of the date of signing of this Agreement, namely: Fairfield, Connecticut; Southfield, New York; and Hightstown, New Jersey.
- (v) A Times driver at a transfer point where bundles are being unloaded for cartage by others will be responsible for his load; his duties will include checking out the bundles to the consignees.
- (vi) When tractor trailer drivers do not work a fifth shift but have worked 45 hours or more in the same payroll week, they will receive benefit credits as if they worked the fifth shift (vacation, sick days, pension and welfare, etc.).
- (vii) By January 1, 1974, the Times will have the NMDU make all United runs from Heightstown to Philadelphia. At the same time, the Times will have the NMDU make daily runs which are presently delivered to United in Jersey City. These will be delivered in straight trucks without tailmen to either Philadelphia or suburban Philadelphia. In the event the new runs result in a jurisdictional dispute which interferes with distribution or causes a substantial sales loss, due to a jurisdictional dispute, the Times will revert to the present delivery pro-

cedure until the dispute is resolved. The Times will promptly use every practical legal means to implement the new runs. If legal action cannot resolve the problem, the change will not be instituted. Instead the Times will have the NMDU handle runs presently delivered by Farrer Transportation, which match the present daily drops. The Times will also move the Fairfield transfer point to the nearest practical location 15 miles further from Columbus Circle.

- (viii) The Times and the Union agree to meet promptly after the ratification of the agreement to discuss the feasibility of direct delivery to suburban areas surrounding cities other than Philadelphia outside the metropolitan area such as Boston, Washington, Baltimore, etc.
- (ix) On those runs and on any new runs established thereafter pursuant to Section 2-E.2 the run time will be based upon the following rule: one hour of run time for every 39 miles of road covered in a run direct from the Times to a single destination. Allowance will be made on runs with more than one destination.
- (x) Paragraph (h) will be construed to include this stipulation: This paragraph (h) may not be invoked by the Times to assign to a motor vehicle common carrier, except where the seasonal factor is the basis of the assignment, a run, in whole or in part, which has been in operation for nine consecutive months. An example of the seasonal factor is the delivery by Times tractor-trailer to a resort area in the summer time with delivery to the same area in the

winter time by common carrier in a combination run.

MEMORANDUM

In connection with The News it is understood: The IBM stipulation continues as it applies to the Daily News orly.

It is agreed that delivery runs to franchise dealers will contain newspapers for the franchise dealers exclusively.

Lockers assigned to the NMDU will be reviewed and revised in a fair and equitable manner.

The foreman will notify the chairman at least one week prior to any change in the method of delivery of relays, routes and use of tail men on a holiday night.

MEMORANDUM

New York News Pension

1. The News and the Union shall each appoint an actuary to determine jointly the reasonable and proper actuarial funding cost of The News pension plans as amended in paragraph 2 below for the calendar year 1966. If the two actuaries fail to agree on the amount, this question shall go to a third actuary to be selected by them for final and binding arbitration. In the event that the two actuaries are unable to agree on the third actuary, he shall be appointed by the American Arbitration Association from its panel of commercial arbitrators. All reasonable costs of the actuaries shall be paid by The News. The News shall con-

tribute the amount determined by the actuaries for the plan as selected in paragraph 2 below:

- 2. The Union shall select one option from among the following for determination of retirement benefits:
- (a) The News basic pension plan shall be amended so as to provide that basic pension benefits of all Deliverers who retire on or after March 31, 1970 shall not be reduced by the amount of any pension benefits received from any other pension plan or by the amount of any increase in Social Security benefits above the level prevailing on December 31, 1964, and to provide further that The News shall not make any change in its pension plans which affects the benefits to be provided by The News without the advance written approval of the chapel and advance written approval of the Union.
- (b) The News shall determine and freeze the net pension accrued to March 31, 1970 for each covered employee in accordance with the terms of The News pension plans as amended in paragraph 2(a) above. For service on and after March 31, 1970, benefits shall be provided under a new pension plan, the terms of which shall be jointly agreed upon.
- 3. In the event that it is mutually agreed that a pension agreement already negotiated by The News with another union or there is a pension agreement which is negotiated during past or current negotiations which grants improvements, which taken in their entirety, are more favorable than those described herein, The News will grant

comparable improvements to covered employees. Should a dispute arise under this paragraph, the procedure for resolving disputes set forth in paragraph 1 shall be used.

MEMORANDUM

New York Times Pension

The Times Retirement Annuity Plan shall be amended so as to provide that Retirement Annuity Plan benefits of an employee covered by this Contract who retires on or after April 1, 1970, shall not be reduced by the amount of any pension benefits from any other pension plan.

MEMORANDUM

New York Times Group Life Insurance

- 1. On and after the thirtieth day following the date of signing of the collective bargaining agreement effective March 31, 1970 an employee covered by it who is or becomes eligible to participate in a life insurance plan provided by the Times will not suffer reduction of benefits under that plan by reason of any benefit which may be received or receivable (a) under the life insurance plan established by NMDU Welfare Fund or (b) under any other life insurance coverage which such employee has or in the future may have.
- 2. No later than the thirtieth day following the date of signing of the collective bargaining agreement effective March 31, 1970 The Times will:
 - (a) restore the full amount of contributory and

noncontributory life insurance to which the employee thereafter is entitled, and for which he is enrolled, under the Times plan; no medical examination will be required for this restoration; and the Times will:

(b) supply the foreman and the chapel chairman with copies of a form by which the employee can decline the foregoing increase, insofar as it applies to contributory life insurance, and any future increases in contributory life insurance under the Times plan, provided he submits such declination form to the Times by the deadline date clearly stated on the form. Having so submitted such a declination form, the employee will retain his present amount of contributory life insurance until it ends under the terms of the Times plan; if on a later date he desires the full amount of such contributory insurance, he must meet as of that date all the requirements of such plan, including the passing of a medical examination.

MINUTE ITEM

Group III and IV men will not be assigned to work overtime which would normally be assigned to employees who are paid a higher rate.

MEMORANDUM

1. Notwithstanding any provision to the contrary in the Agreement between NMDU and the members of the PANYC, effective March 31, 1973 to March 30, 1975, if a Publisher decides to eliminate, reduce or phase-out its early ("Bulldog") edition, the terms of this Memorardum shall

govern the conditions of employment upon such elimination, reduction or phasing-out;

- 2. The Publisher shall give the Union written notice of its intention to eliminate, reduce or phase-out its early edition:
- 3. No regular situation holder employed in connection with the delivery or handling of such early edition will be laid off because of its elimination, reduction or phasing-out but will be declared to be an "excess situation holder" if his situation has been designated as an "excess situation";
- 4. The regular situations no longer required because of such elimination, reduction or phasing-out shall be designated by the Publisher as "excess situations";
- 5. When a vacant situation is to be filled or a new situation created it shall be filled by an "excess situation holders" (so that an additional situation is not made) until all "excess situation holders" have been so placed.

Prior thereto, "excess situation holders" may be assigned to perform other available work described in Section 2 of the Agreement for which they are qualified under such rates of pay and working conditions as are applicable to regular situation holders under the Agreement.

6. The right of the Publisher to reduce the number of routes, carriers or deliveries and to combine, amalgamate, condense, alter, discontinue or otherwise rearrange routes or deliveries is recognized by the Union but the Publisher waives

its right to lay off men in connection with the elimination, reduction or phasing-out of the early edition, except as to "excess situation holders" who are seventy (70) or more years of age nor shall the provisions of Section 3 and 4 of the Agreement be applicable to them.

7. The Union recognizes that overtime payments associated or connected with the early edition, or that portion of it hereby affected, may be discontinued immediately upon the elimination, reduction, or phasing-out of the early edition. The assigning of starting times and days off of "excess situation holders" upon the elimination, reduction, or phasing-out of the early edition shall be at the discretion of the Publishers and may be done in a manner calculated to minimize the hiring of extras and to reduce or eliminate overtime whether on the regular morning routes or on the early edition itself.

MEMORANDUM

March 31, 1973

Mr. Carl Levy Newspaper & Mail Deliverers' Union 41-18 27 Street Long Island City, N.Y.

Dear Mr. Levy:

This letter will affirm the understanding of the parties that the "zone" route concept used at Newspoint will not be introduced into the black and white operation for two years from the date of this letter. It is further agreed that the parties disagree as to the application or non-application of the above paragraph to changes in the number of ranchise runs which has been a problem and that this letter does not prejudice either party's position on that question.

Yours very truly,

James W. Artz

IN MITHESS WHEREOF, we have executed the above as of Last. 121779

FOR FUBLISHERS' ASSOCIATION OF NEW YORK CITY

S ACE

for

THE NEWS

or 2/0 Krach

THE NEW YORK TIMES

or July Mitin

PUBLISHERS' ASSOCIATION OF

or 20 Krache

POT REWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY

or Cal teny

by Dougland share

by Cheal Part

by Joyl Riciardi

APPENDIX

(Section number refers to prior contract)

2-L. The Union shall furnish at all times and at regular time rates as many men as may be required by a Publisher, such men to be competent and able to perform the particular operation for which they are required. If a Publisher requires his regular employees to work in excess of a fifth shift, overtime at the rate of time and one-half shall be paid for the full shift. When the Union fails to furnish such men promptly, the Publisher is authorized to meet his needs by employing such men as he may be able to obtain; if the men so employed are not members of the Union they shall be employed only so long as the Union does not furnish members of the Union willing and qualified to take their places, but any man so employed shall be allowed to complete his day's work. Nothing herein contained is to be construed as conferring of power upon any Publisher to fill a regular situation with anyone not a member of the Union.



INDEX

(Section Headings Are in Capital Letters)

Absence for a Continuous Period of 20 Reg-	ec. No.	Page
uar Working Days or More	4-F	27
Absence for a Period Aggregating More than 40 Working Days	4-F	27
Accidental Death and Dismemberment In-		
surance	3-H	17
Advance Sections, Overtime on	3-J	17
Adjustment Board (See also 16 H, I, J, K, L, N)	4-A, 2	22
AGREEMENT		1
Alternate Impartial Chairman	16-E2	58
American Arbitration Association	2-H	8
Appeals Board (See also 2-E; 3-A, B, D, E, G, H, K, M; 4-H; 5-L, M; 6-F, G. 10-F, I, J; 11; 12-A, B, C; 13-A, G; 14-A; 15)	16	56
APPENDIX		93
Application for Work	2-J	9
Arbitration of Mailroom Jurisdiction	2-H	8
Automated Process	3-D	
	4, 5, 6	14, 15
Back Pay in Case of Reinstatement	16-K	60
Bad Driving Record Cause of Discharge	14-C	56
Bill Posting	3-L	19
Bonus	3-Q	21
	13-E	50
Bundles, Size and Weight of	3-A	12
Bus Carriers	2-E1	5
Canada Point Men	3-C	13
Canada Points	2-D	5
Casual Extras	4-A2	22
Changes in Conditions, 30-Day Ruling	16-M	60
Changes in Routes or Deliveries	3-D, 3	13
	3-E	16
Changes in Starting Times	5-J	31
CHAPEL CHAIRMAN	8	36
Chapel Meetings	8	36
Check-off	2-N	11
Collections, Two Days' Pay	13-F	50

	Sec. No.	Page
Combined Delivery Through Wholesaler		16
Solipetency	2-I	10
	4-A4	25
	4-C. D	26, 27
	4-H	28
Complaint Against Foreman		33
Compliance with NLRB or Court Orders, etc.		25
CONDITIONS OF WORK		11
Cost of Living Allowance		45
Coverage, Occupation		2
Coverage, Territorial		1
Damages Imposed		60
Day Work, Hours		29
Dealers		12
Death Leave	3-P	20
Defaults		9
Delivery Points		5
Direct Delivery Methods and Extent		16
DISCHARGE		55
Discharge Grievance	15	56
Discharged Employee Need Not Be Em-		00
ployed Pending Adjustment and Determi- nation of Cause		55
Distribution Through Wholesalers	12-A	41
Double Time for Sunday Work		31
Duration of Contract		64
Economic or Business Reason Defined	3-D2	13
Employees' Engagement of Assistants		
Forbidden Employees to Be Able to Work at Straight-	2-M	10
Time Rates		10
Extra Crews		19
Extras, Listing of		22
Casual		22
Industry		22
Listing to Be Revised		22
Method of Hiring		22
Regular	4-A2	22
Requirements for Inclusion on Listing		22
Transfer of Regular to Group 1		22
Unemployed	4-A2	22

	Sec. No.	Page
Federal Mediation and Conciliation Service		64
Filling of Situations	4-B	26
Fork Lift	3-Q	21
FOREMEN		32
May Perform Operations		32
Or Assistant Foreman in Each Plant		33
Or Assistant Foreman on Each Shift		33
To Be Members of Union		32
To Hire or Discharge		33
Four Days' Notice of Change of Time		31
Full Day's or Night's Wage		30
GRIEVANCES		56
HALF-DAY BOYS		38
Consolidation of Routes		40
Definition of		38
Drawing Newspapers	10-Е	39
Elimination of		39
Limitation of Number of	10-G	39
Lists Of to Be Prepared	10-F	39
May be Employed by Evening Papers	_ 10-D	39
May Not Be Employed by Mornin	ng	
Papers		39
Not Members of the Union	10-A	38
On Routes	10-J	40
Hardships and Hazards	3-Н	16
HIRING PRACTICES	4	21
Heaters and Defrosters	3-Н	16
Holiday Pay for Extras	7-D	35
For Regulars	7-C	35
For Work When Paper Is Not Issued	7-E	36
HOLIDAYS	7	34
Extent of	7-B	35
Honor Boxes	2-A2	3
Vending Machines	2-A2	3
Home Delivery	2-G	8
Hourly Rate for Members Performing Wo	rk	
Outside of Operations		49
Hours of Work		29
Impartial Chairman		57, 58
Industry Extras		22
Inspectors		8

Joint Standing Committee	Sec. No.	
(See also 2-E; 3-A, B, D, E, G, H, K, M;	. 16	56
4-H; 5-L, M; 6-F, G; 10-F, I, J; 11;		
12-A, B; 13-A, G; 14-A; 15)		
JOINT STANDING COMMITTEE AND		
APPEALS BOARD		
Automatic Submission to Appeals Board	16	56
Chairmen of, How Selected		57
Fore of	16-E1, 2	57, 58
Fees of	16-O	61
Creation of Decisions of	16-B	56
Decisions of	16-C	57
Failure to Appear Before	16-J	59
Findings Enforceable in Court	16-C	57
Grievances Referred to	16-A	56
	16-F	58
Reinstatement of Employees	16-K	60
Render Decision in Five Days	16-G	58
Rules of Procedure	16-I	59
Januare III Mail Rooms	2-H	8
Jurisdiction over New Mechanical Devices	2-C	4
Over Other Work	2-B	4
	9-A, B	37, 38
July Duty	13-J	53
Laws of Association and Union	3-N	20
Lay-off for Economic or Business Reasons	3-D1	13
Lay-on, Two Weeks' Notice	4-E	27
zias to be Posted	4-G	28
Loads, Size of	3-A	(~ 11
	16-N	₹ 61
cons .vights	5-D	29
renod, Paid	5-N	3 32
ranner of Wrapping and Tving	3-B	312
rempers Employed in Other Canalia	2-K	13
ILMORANDUM		14
	18	64
intary Service	4 17	27
egotiations for New Contract	9	64
CIUAL GUARANTEES	7	62
ew Mechanical Dovises	2-C	4
	3-D	
		14 15

	Sec. No.	Page
New Routes, Development of		16
New York State Board of Mediation	19	64
Nights Off	5-D	29
Night Work, Hours	5-В	29
No Deviation from Terms of Contract		19
NON-COMPLIANCE	11	40
Oath of Members Not Necessary		60
OCCUPATION COVERAGE	2	2
Open Job, Bidding for	4-B	26
Assignment of	4-B	26
Extras to	4-C	26
Over the Road Trucking	2-E2	5
Overtime	5-F, J	30, 31
For Sunday Work	_ 5-H, K	30, 31
For Work in Excess of Five Shifts	2-L	10
On Advance Sections	3-J	17
Rate and Period	_ 13-D	50
To Be Worked as Required	5-M	31
Work Performed Before or After a Hol	i-	
day Rate Shift	7-В	35
Paid Leave of Absence	13-K	54
Penalties on Foreman	6-G	34
Physical Incapacity Cause of Discharge	14-B	55
PREAMBLE		1
Present Practices		16
Promote Business of Publisher		20
Promotional Matter	3-L	19
Promotional Priority List	4-D	27
Reduction in Force		27
Regular Extras	4-A2	22
Regular Situation in One Shop Only	4-A3	25
Regular Work-Week		30
Return Department Employees	2-F	. 8
Right of Foreman to Hire or Discharge		33
Schedules: Number of Papers in Load or		
Bundle	3-A	11
SECTIONS PRINTED IN OUTSIDE		
PLANTS	9	37
SENIORITY		21
Seniority and Priority Lists		21
belliotity and Thoric, 200		

SHIFTS AND REGULAR WORKING	Sec. No.	Page
TIME	. 5	29
Shifts Day or Night or Both	3-I	
Shortages		
Status Quo		
Strikes		61
Sunday Work		
	I. K	30, 31
SUSPENSION AND MERGER PAY	18	64
Tailmen	3-A	
Terminals of Railroad, Bus and Air Lines	2-D	5
TERMINATION AND NEW AGREEMENT		64
TERRITORIAL COVERAGE	1	1
Ties to Be Broken .	4-A.2f	
Travel Time		31
Trucks		18
Trust Agreement, Welfare		
Pension	13-I	52
Unemployed Extras		22
Union Shop Contract	2-L	10
Vacations		47
Wages.		
WAGES AND VACATIONS	13	44
Welfare, Contributions	13-H	BALLEY COLD SET THE
WHOLESALERS AND NEWS		
COMPANIES		41
Wholesalers Must Have Written Agreement		41
Wholesaler or News Company, Whether In-		
dependent Contractor	12-B	41
Wholesaler or News Company, Present Prac-		
tices to Continue	12-C	42
Work in Excess of Fifth Shift		10
Work Week	5-C, D	
Wrapping and Tying Bundles	3-B	12

NOTES & MEMORANDA

NOTES & MEMORANDA

DNITED STATES ATTORNEY

12/13/24 - JUSA